92-757

No. 92-

IN THE

Supreme Court of the United States

October Term 1992

BARBARA LANDGRAF,

Petitioner,

v.

USI FILM PRODUCTS,
BONAR PACKAGING, INC., AND
QUANTUM CHEMICAL CORPORATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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October 28, 1992.

QUESTIONS PRESENTED

I. Does the Civil Rights Act of 1991 apply to cases pending when the Act became law so as to entitle petitioner to the full redress provided in section 102 of the Act, where both lower courts found that she was the victim of unlawful sexual harassment in violation of Title VII, but was not entitled to any relief whatsoever?

II. Did the Fifth Circuit misapply the "manifest injustice" test set forth in *Bradley v. School Board of Richmond*, 416 U.S. 696 (1974), in determining that the application of the Civil Rights Act of 1991 to this case would result in manifest injustice to respondents?

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Petitioner Barbara Landgraf respectfully prays that the Supreme Court grant a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on July 30, 1992.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported as *Barbara Landgraf v. USI Film Products, Bonar Packaging, Inc., and Quantum Chemical Corporation*, 968 F.2d 427 (5th Cir. 1992). (App. A-1) The district court issued Findings of Fact and Conclusions of Law on May 20, 1991. Those Findings and Conclusions are not reported, but are set forth in the Appendix at B-1. The district court's judgment was entered on May 22, 1991. (App. C-1)

JURISDICTION

The judgment of the Court of Appeals was entered on July 30, 1992.

This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 1254(1) and 2101(c).

STATUTE INVOLVED

This case involves the Civil Rights Act of 1991. Pub. L. No. 102-166, 105 Stat. 1071 (1991). The specific provision at issue in this case is section 102 of the Act. The Act is set forth in its entirety in the Appendix at D-1.

STATEMENT OF THE CASE

Barbara Landgraf was employed by USI Film Products ("USI")[1] from September 4, 1984 through January 17, 1986. During that period, she was subjected to sexual harassment consisting of continuous and repeated inappropriate verbal comments and physical contact by a fellow employee, John Williams. Several times, Ms. Landgraf reported that harassment to her direct supervisor, Bobby Martin, but to no avail; Martin took no action to stop the harassment. She eventually reported the harassment to Sam Forsgard, supervisor of personnel matters. Forsgard conducted an investigation that entailed interviewing numerous female employees of USI. Those women corroborated Ms. Landgraf's allegations. As a result of that investigation, USI purportedly transferred Williams to another department in the plant; Williams also received a written reprimand. USI conceded, however, that Williams was still in Ms. Landgraf's work area on a regular basis. (App. A-3) Shortly after Williams was "transferred," Ms. Landgraf resigned from her position at USI.

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[1] USI Chemical Products, which is not a legal entity, is the plant where Barbara Landgraf worked. USI was owned by Quantum Chemical Corporation while Barbara Landgraf worked there. It is now owned by Bonar Packaging, Inc. Prior to trial the parties stipulated that Bonar Packaging, Inc. is the corporate successor in interest.

Ms. Landgraf filed a timely charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). In due course, the EEOC issued a Notice of Right to Sue.

On July 21, 1989, Ms. Landgraf commenced a timely action against USI in the United States District Court for the Eastern District of Texas alleging, among other things, sexual harassment under Title VII of the Civil Rights Act of 1964. A bench trial was held on February 4, 1991. On May 22, 1991, the district court entered Findings of Fact and Conclusions of Law. The district court found *inter alia* that:

- Ms. Landgraf had been subjected to continuous sexual harassment consisting of "continuous and repeated inappropriate verbal comments and physical contact" from John Williams;

- Ms. Landgraf's direct supervisor, Bobby Martin, had taken no action to halt the harassment, even though Ms. Landgraf reported the harassment on several occasions;

- The remedial actions that were eventually instituted after Sam Forsgard's investigation alleviated the harassment;

- Ms. Landgraf resigned because she had difficulty getting along with her co-workers, and that that situation was unrelated to the sexual harassment; and

- Ms. Landgraf "suffered mental anguish as a result of the sexual harassment she was subjected to while working at USI".

(App. B-1-B-2)

In light of the above, the district court concluded that:

- Ms. Landgraf was the victim of unlawful sexual harassment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et seq.*;

- Ms. Landgraf's complaints to Martin constituted actual notice of the harassment;

- Martin's repeated failure to take action, constituted failure on the part of USI to take prompt remedial action to halt the sexual harassment;

- Ms. Landgraf was not constructively discharged within the meaning of *Bourque v. Powell Electrical Manufacturing Co.*, 617 F.2d 61, 65 (5th Cir. 1980); and

- Ms. Landgraf was entitled to no relief whatsoever.

(App. B-2-B-5)

The district court's judgment was entered on May 22, 1991. (App. C-1) Barbara Landgraf timely appealed from that judgment, asserting that the district court erred in finding that USI had taken steps reasonably calculated to end the harassment, and that she had not been constructively discharged. Ms. Landgraf also asserted that the district court erred in failing to make findings of fact and conclusions of law relating to her retaliation claim. In addition, she argued that even if she failed to prove constructive discharge, she still was entitled to nominal damages and equitable relief. Finally, Ms. Landgraf asserted that the compensatory and punitive damages and the jury trial provisions of the Civil Rights Act of 1991 (the "Act") were applicable to her case.[2]

On July 30, 1992, the Court of Appeals for the Fifth Circuit, which had jurisdiction pursuant to 28 U.S.C. § 1291, affirmed the district court's ruling. (App. A-10) Citing its limited scope of review, the court held that the district court did not clearly err in making its findings and conclusions. (App. A-4-A-6) The court likewise rejected Ms. Landgraf's arguments for nominal damages and equitable relief. (App. A-6-A-7)

[2] The Civil Rights Act of 1991 was signed into law on November 21, 1991, while Ms. Landgraf's appeal was pending. By letter dated February 6, 1992, counsel for petitioner requested the clerk of the court to bring to the Fifth Circuit's attention the potential applicability of the Act to her case.

Ms. Landgraf's argument with respect to the applicability of section 102 of the Civil Rights Act of 1991 also was rejected. (App. A-8-A-10) Referring to *Johnson v. Uncle Ben's Inc.*, 965 F.2d 1363 (5th Cir.1992), in which the Fifth Circuit recently had held that section 101 of the Act is not applicable to pending cases, the court held that section 102 of the Act likewise is not applicable to such cases. The court applied the "manifest injustice" test of *Bradley v. School Board of Richmond*, 416 U.S. 696 (1974), and determined first, that requiring respondents to retry the case before a jury would be an injustice and a waste of judicial resources, and second, that applying the compensatory and punitive damages provision would be an injustice because it would impose "an additional or unforeseeable obligation" on respondents. (App. A-9-A-10)

Thus, the Fifth Circuit held that although Barbara Landgraf was the victim of "uncontested . . . significant sexual harassment," she would be left with no remedy whatsoever, because neither the jury trial nor the compensatory and punitive damages sections of the Act could be applied to "conduct occurring before [the Act's] effective date". (App. A-10)

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT *CERTIORARI* TO RESOLVE THE SPLIT IN THE CIRCUITS AS TO WHETHER THE CIVIL RIGHTS ACT OF 1991 APPLIES TO PENDING CASES.

To date, the Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, and District of Columbia Circuits have ruled on the question of the Act's application to pending cases.[3] Six of those circuits have held that the Act, or parts thereof, is not applicable to pending cases. The Ninth Circuit has held that it is. As such, there is conflicting jurisprudence on this issue. We respectfully submit

[3] To date at least 263 district and circuit court cases have addressed the issue, often with extensive opinions. An index of those cases is attached at App. E-1.

that the issue has been sufficiently vetted by the lower courts and that it is now ripe for review in this Court. Without this Court's guidance, the lower courts will remain in hopeless conflict on this important issue.

A. This Court Should Grant *Certiorari* to Resolve the Conflicting Holdings of the Courts of Appeals.

Less than three months after the Fifth Circuit ruled in this case, the Ninth Circuit created a conflict in the circuits by holding that all provisions of the Civil Rights Act of 1991 apply to pending cases, except where the Act explicitly states otherwise. *Davis v. City of San Francisco*, No. 91-15113, 1992 U.S. App. LEXIS 24836 (9th Cir. Oct. 6, 1992). Next month marks the one-year anniversary of the Civil Rights Act of 1991. Since the passage of the Act, the issue whether the Act applies to pending cases has confronted virtually every federal court, and the courts are in hopeless disarray. An enormous quantity of judicial resources has been expended on this issue. Moreover, until this Court rules, members of the bench and bar will continue to expend such resources. Those expenditures, however, will be futile; only this Court can resolve the issue. We are aware that this issue has been presented to the Court on several occasions, but that the Court apparently decided to wait for a full airing in the lower courts. *See Gersman v. Group Health Ass'n, Inc.*, 931 F.2d 1565 (D.C. Cir. 1991), *cert. granted and judgment vacated by* 112 S. Ct. 960 (1992); *Holland v. First Virginia Banks, Inc.*, 937 F.2d 603 (4th Cir. 1991), *cert. granted and judgment vacated by* 112 S. Ct. 1152 (1992); *Hicks v. Brown Group, Inc.*, 946 F.2d 1344 (8th Cir. 1991), *cert. granted and judgment vacated by* 112 S. Ct 1255 (1992). The Court also apparently waited to see whether a conflict in the circuits would develop. *See Mozee v. American Commercial Marine Serv. Co.*, 963 F.2d 929 (7th Cir.), *cert. denied*, 61 U.S.L.W. 3150 (Oct. 5, 1992). The issue has been aired and a conflict does exist. Now, we submit, it is time for the Court to resolve this conflict.

Without further guidance from this Court, the lower courts cannot come to a consistent resolution of this issue. *See Baynes v. A.T.& T. Technologies, Inc.*, No. 91-8488, 1992 U.S. App. LEXIS

26892, at *1 n.1, *12 (11th Cir. Oct. 20, 1992) (holding that §§ 101, 102 do not apply to pending cases where a judgment had been entered prior to November 21, 1991, but declining to decide whether the Act would apply to pending cases "in other circumstances"); *Gersman v. Group Health Ass'n, Inc.*, No. 89-5482, 1992 WL 220163, *15-*16 (D.C. Cir. Sept. 15, 1992) (Sentelle, J.) (declining to apply § 101 of the Act, which affected substantive rights, to pre-enactment conduct, but leaving open the issue of whether "procedural" and "remedial" changes would apply to pending cases); *Luddington v. Indiana Bell Tel. Co.*, 966 F.2d 225, 229-30 (7th Cir. 1992) (holding that the Act did not apply to pre-enactment conduct "if the suit had been brought before the effective date", but not addressing suits based on pre-enactment conduct and filed after the effective date). *Compare Fray v. Omaha World Herald Co.*, 960 F.2d 1370, 1378 (8th Cir. 1992) (holding broadly that "§ 101 of the Act, overruling Patterson, should not be applied to pending cases or other pre-enactment conduct")[4]; *Vogel v. City of Cincinnati*, 959 F.2d 594, 597 (6th Cir.) ("We hold that the 1991 Act does not govern the instant case which involves conduct that occurred before the 1991 Act became law."), *cert. denied*, 60 U.S.L.W. 3881 (Oct. 5, 1992).

B. This Court Should Grant *Certiorari* Because the Important Issue Raised By This Case Has Been Thoroughly Examined by the Lower Courts and Urgently Requires Resolution.

The circuits disagree not only as to whether the Act in general should apply to pending cases, but also with respect to the legal bases for their decisions. *See Davis*, No. 91-15113, 1992 U.S. App. LEXIS 24836, at *41-*65 (criticizing other circuits' failure to analyze the plain language of the Act correctly; unlike those courts, finding no need to rely on judicial presumptions, given that plain language); *see also Tyler v. Commonwealth of Pa.*,

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[4] Following the Supreme Court's decision to remand the *Hicks* case, *see Hicks*, 112 S. Ct. at 1255, the Eighth Circuit is re-visiting the issue *en banc*. *See Hicks v. Brown Group, Inc.*, Nos. 88-2769/2817 EM (argued on July 21, 1992).

Dep't of Revenue, 793 F. Supp. 98, 98 (M.D. Pa. 1992) ("Although the three circuit courts [*Mozee*, *Fray* and *Vogel*] which have had the opportunity to address this issue have all held that the Act has no retroactive effect, each court based its decision on a different rationale."). Until this Court rules, this confusion will persist.

The Eighth Circuit alone relied heavily on legislative history, finding that Congress's inability to override the President's veto of a prior version of the Act that explicitly applied to pending cases was "dispositive" of Congress's intent that the Act should apply only prospectively. *Fray*, 960 F.2d at 1378. However, the opposite inference can be drawn from the Act's omission of language proposed by the Administration that would have expressly provided for prospective application only. *See Davis*, No. 91-15113, 1992 U.S. App. LEXIS 24836, at *58-*60 (criticizing *Fray's* interpretation of the legislative history). While five other circuits have declined to apply the Act, or parts thereof, to pending cases, they found little guidance in either the language of the Act or its legislative history. The Fifth, Seventh, Eleventh and District of Columbia Circuits chose to rely on different judicial rules for interpreting whether statutes apply to pending cases. *See Baynes*, No. 91-8488, 1992 U.S. App. LEXIS 26892, at *3-*6; *Landgraf*, 968 F.2d at 432; *Mozee*, 963 F.2d at 934; *Gersman*, No. 89-5482, 1992 WL 220163, at *5, *7, *16.[5] *See also Vogel*, 959 F.2d at 598.

[5] In a majority of these decisions, dissenting judges have added to the analysis of the issues. *See Gersman*, No. 89-5482, 1992 WL 220163 (Wald, J., dissenting) (thoroughly reviewing other circuits' decisions and the rules of statutory construction, then finding no reason not to apply § 101, because the new law is the same as the law before *Patterson*, when the disputed conduct occurred); *Mozee*, 963 F.2d at 940 (Cudahy, J., dissenting) ("The specific facts of the real-life case . . . cry out for a different solution. . . . [The majority's] result . . . is neither rational nor just."); *Fray*, 960 F.2d at 1380 (Heaney, Sr. J., dissenting) (taking issue with the majority's reliance on legislative history, because "Congress . . . deliberately left the Act retroactivity-neutral, reserving the issue for the courts to decide.").

The Ninth Circuit's analysis focused on what this Court has repeatedly declared to be the "'elementary canon of construction that a statute should be interpreted so as not to render one part inoperative'". *Davis*, No. 91-15113, 1992 U.S. App. LEXIS 24836, at *46 (quoting *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 510 n.22 (1986) (quoting *Colautti v. Franklin*, 439 U.S. 379, 392 (1979))). Just last term, this Court reiterated that rule: it is a "settled rule" of statutory construction "that a statute must, if possible, be construed in such fashion that every word has some operative effect". *United States v. Nordic Village, Inc.*, 112 S. Ct. 1011, 1015 (1992). Moreover, this Court has noted "time and again" that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there". *Connecticut Nat'l Bank v. Germain*, 112 S.Ct. 1146, 1149 (1992).

Applying this cardinal rule of statutory construction, the Ninth Circuit held that because the statute directs that "in two specific instances the Act not be applied to cases having to do with pre-Act conduct", the rest of the Act must apply to pending cases; otherwise, those provisions would be mere surplusage. *See Davis*, No. 91-15113, 1992 U.S. App. LEXIS 24836, at *14-*15. "Guided by the plain language of the statute and [the aforementioned] cardinal rule of interpretation", the Ninth Circuit concluded that "Congress intended the courts to apply the Civil Rights Act of 1991 to cases pending at the time of its enactment and to pre-Act conduct still open to challenge after that time". *Davis*, No. 91-15113, 1992 U.S. App. LEXIS 24836, at *65. The Fifth, Sixth, Seventh, Eighth, Eleventh and D.C. Circuits, however, barely acknowledge that tenet of statutory interpretation. *See id.* at *50-*54.

Until this Court rules, uncertainty will continue to hang over all the civil rights cases that were pending when the act was passed, as well as those cases filed after its enactment that are based on pre-Act conduct. To minimize the number of cases that

must be reversed and possibly retried[6]—to avoid needless waste of judicial resources—we submit that immediate resolution of this issue is required. Accordingly, petitioners urge the Court to grant a writ of *certiorari*.

C. This Court Should Grant *Certiorari* to Afford Redress to Victims of Illegal Discrimination.

In passing the Civil Rights Act of 1991, Congress found that "additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace". 105 Stat. 1071 § 2(1). As Senator Jeffords commented on the Senate floor, "[f]or the first time ever, this bill will provide substantial damages for those women who do successfully prove intentional discrimination to the courts". 137 Cong. Rec. S15242 (daily ed. Oct. 25, 1991). It is undisputed that Barbara Landgraf "suffered significant sexual harassment" during her employment at USI. (App. A-3) As a result of that harassment, she suffered mental anguish. (App. B-2) Clearly, Ms. Landgraf is the type of plaintiff Congress had in mind when amending Title VII to afford victims of sexual harassment and sex discrimination remedies commensurate with those available under section 1981 to victims of racial discrimination. As Senator Durenberger stressed, the Act "closes [a] gigantic loophole in our discrimination laws". 137 Cong. Rec. S15490 (daily ed. Oct. 30, 1991); *see* also 137 Cong. Rec. S15446 (daily ed. Oct. 30, 1991) ("The current hierarchy of remedies simply makes no sense. Under existing law, a black woman can sue for damages for racial discrimination but if she suffers gender discrimination, she's out of luck."). However, despite Congress's clear intent to provide

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[6] As an indication of the uncertainty the district courts face, some courts have gone so far as to conduct simultaneously a bench and a jury trial, sealing the bench trial opinions until the jury's decision was announced. The judge in *Boss v. Board of Educ., Union Free School District #6*, No. CV 92-0399, 1992 WL 160398 (E.D.N.Y. July 6, 1992) instituted this procedure to obviate the need to remand the case for a new trial if the circuit court or Supreme Court applies the § 102 remedies to the case. The judge in *Hendricks v. Clark*, 57 Fair Empl. Prac. Cas. (BNA) 1328 (N.D. Ala. Jan. 14, 1992) adopted a similar procedure, again to avoid the need for a retrial.

victims like Ms. Landgraf with legal redress, the Fifth Circuit held that she "was not entitled to *any relief* under Title VII". (App. A-6-A-10 (emphasis added)) Such a holding conflicts with this Court's recent pronouncement in an analogous context that "absent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute". *Franklin v. Gwinnett County Pub. Sch.*, 112 S. Ct. 1028, 1035 (1992) (where a female former-student had been subjected to sexual harassment and otherwise would be afforded no relief, the Court held there is an implied right of action for damages under Title IX). Here, even though both lower courts found that Ms. Landgraf was the victim of unlawful sexual harassment, she was denied any relief whatsoever. This Court should grant the writ of *certiorari* to reverse this injustice.

II. THIS COURT SHOULD GRANT *CERTIORARI* TO RESOLVE THE CONFLICT CONCERNING THE APPLICATION OF JUDICIAL PRESUMPTIONS.

Courts need not apply judicial presumptions when the plain language of a statute is clear. The Fifth Circuit, however, ignored that well-established principle of statutory construction and relied on judicial presumptions to reach its holding. Even if reliance on judicial presumptions were appropriate here—and, we submit, it is not—the Fifth Circuit misapplied the presumption in this case.

In *Bradley v. School Board of Richmond*, 416 U.S. 696 (1974), a unanimous Supreme Court announced a presumption in favor of applying new statutes to pending cases. Relying on Chief Justice Marshall's opinion in *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801), the Court stated that, "a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary". *Bradley*, 416 U.S. at 711. Later, in a case involving the Secretary of Health and Human Services' authority to promulgate retroactive cost limits by regulation, the Court stated in dicta: "Retroactivity is not favored in the law. Thus, congressional enactments and

administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).[7]

The Court since has described these lines of authority as existing in "apparent tension". *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 837 (1990). That "apparent tension" runs through the opinions of many courts that have attempted to decide whether the 1991 Act applies to pending cases. Indeed, that "apparent tension" has generated much of the confusion surrounding the issue. Recognizing the "tension between the *Bradley* and *Bowen* cases" the Fifth Circuit correctly chose to apply the *Bradley* "manifest injustice" test (App. A-9), but, we submit, misapplied it.

Notwithstanding the "apparent tension" and the lower courts' continued difficulty in applying those judicial presumptions, it is important to note that the tension between *Bradley* and *Bowen* is more apparent than real. In *Bowen*, the Court refused to alter *vested rights* through retroactive rulemaking, and *Bradley* unequivocally agreed that "[t]he Court has refused to apply an intervening change to a pending action where it had concluded to do so would infringe upon or deprive a person of a right that had matured or become unconditional". *Bradley*, 416 U.S. at 720 (citations omitted). In this regard, the holding and result of *Bowen* fits squarely within the principle of *Bradley*. *See Federal Deposit Ins. Corp. v. Wright*, 942 F.2d 1089, 1095 n.6 (7th Cir. 1991) ("Any tension between the two lines of precedent is negated because, under *Bradley*, a statute will not be deemed to apply retroactively if it would threaten manifest injustice by disrupting vested rights."), *cert. denied*, 112 S. Ct. 1937 (1992).

The remedial right to damages and the procedural right to a jury trial at stake in this case do not alter vested rights, and thus fall outside the *Bowen* rule. *See, e.g., Bridges v. Eastman Kodak Co.*, No. 91 Civ. 7985 (RLC), 1992 WL 213260, at *5 (S.D.N.Y.

[7] In *Bowen*, the issue of retroactive application was not part of the holding since the Court held that "the Secretary has no authority to promulgate retroactive cost-limit rules". *Bowen*, 488 U.S. at 215.

Sept. 1, 1992) (finding no "manifest injustice" in applying § 102 of the Act to pre-enactment conduct, because the parties had "no 'vested right [ ], ' to limit their damages or to a trial by jury before the [1991 Civil Rights] Act took effect") (citation omitted); *Manning v. Moore Business Forms, Inc.*, No. 91-C-707-S, 1992 WL 160604, at *2 (W.D. Wis. Mar. 31, 1992) (in holding that § 102 of the Act applies to pending cases, the court reasoned that "there is no vested right in a court trial or a damage limitation").[8]

In applying the *Bradley* test, the crux of the Fifth Circuit's reasoning was that "to charge individual employers with anticipating [the] change in damages available under Title VII" would be an "injustice". *Id.* As such, the court found that justice is more concerned with preserving employers' calculations of the costs of committing intentional illegal acts than with recompensing victims of "uncontested" illegality (the sexual harassment of Ms. Landgraf was "uncontested" (App. A-3)).

The Fifth Circuit's reasoning cannot be right. The law absolutely prohibits—and has absolutely prohibited since Title VII became law in 1964—intentional discrimination. "The law has never countenanced that an employer may weigh the legal consequences of his discrimination and choose to continue his unlawful conduct. An employer cannot pay for the right to discriminate because no such 'right' has ever existed . . . . [T]he law has always permitted a Court to impose unconditional injunctive relief." *Robinson v. Davis Memorial Goodwill Indus.*,

[8] A review of the last five Supreme Court cases, including *Bradley* and *Bowen*, involving the application of new law to pending cases, or prior conduct, demonstrates that *Bradley* and *Bowen* represent two distinct kinds of cases. *See Bowen*, 488 U.S. 204 (1988); *Bennett v. New Jersey*, 470 U.S. 632 (1985); *United States v. Security Indus. Bank*, 459 U.S. 70 (1982); *Bradley*, 416 U.S. 696 (1974); *Thorpe v. Housing Auth.*, 393 U.S. 268 (1969). Where a change in law does not alter vested rights, it will be presumed to apply to pending cases. Conversely, where a change in law alters vested rights, or changes the legal effects of past acts, the change will be presumed to apply prospectively. *See, e.g., Lussier v. Dugger*, 904 F.2d 661, 665-66 (11th Cir. 1990) (noting statutory changes that affect procedural and remedial matters presumably apply to pending cases; distinguishing changes that affect substantive matters).

790 F. Supp. 325, 332 (D.D.C. 1992).[9] In addition, "[t]here is little precedent for, and certainly little logic in, construing the retroactivity of the [Civil Rights Act of 1991] to favor the wrongdoers and deny their victims the right to recover fair damages." *Tarver v. Functional Living, Inc.*, 796 F. Supp. 246 (W.D. Tex. 1992) (citations omitted). "Because society's valuation of a victim's losses understandably changes over time, it does not seem unfair to force litigating parties to comply with the more recent statutory changes with regard to damages." *Mozee*, 963 F.2d at 939; *see Bridges*, No. 91 Civ. 7985 (RLC), 1992 WL 213260, at *5 (same). By analogy, the 1972 amendment that provided new remedies in cases of federal employment discrimination was widely held to apply to pending cases. *See, e.g., Womack v. Lynn*, 504 F.2d 267, 269 (D.C. Cir. 1974) (applying the amendment to pending cases because it "is merely a procedural statute that affects the *remedies* available to federal employees suffering from employment discrimination. Their *right* to be free of such discrimination has been assured for years") (emphasis in original).

Similarly, the jury trial to which Ms. Landgraf would have been entitled had the Fifth Circuit applied the Act to her case, as we submit the Act intends, is a procedural matter and does not affect the merits of the underlying conduct. *See Lorillard v. Pons*, 434 U.S. 575, 584 (1978) (examining procedural provisions of federal statutes to discern jury trial right); *Wabol v. Villacrusis*, 958 F.2d 1450, 1460 (9th Cir. 1990) ("The jury trial guarantee is primarily a procedural right . . . ."). Even district courts that do not find the entire Act applicable to pending cases find that the right to a jury trial should apply because it is a procedural right. *See Basilick v. Cole Taylor Bank*, No. 91-C-5156, 1992 WL 166950, at *1 (N.D. Ill. July 8, 1992) (applying jury trial right of the Civil Rights Act of 1991 to pending cases because "[t]here

[9] *See also Mozee*, 963 F.2d at 939 ("Granted, the greater an award of damages for proscribed, unwanted conduct, the less likely that persons and entities will perform this unwanted conduct. Nonetheless, the traditional theory underlying at least compensatory damages is that they are meant to compensate parties for their losses.").

can be no doubt that the jury right does not involve changes in substantial matured rights and obligations"); *Brown v. Amoco Oil Co.*, 793 F. Supp. 846, 851 (N.D. Ind. 1992) (considering the "right to a jury trial" to be a "procedural matter"); *Pandya v. City of Chicago*, No. 91 C 5700, 1992 U.S. Dist. LEXIS 12074, *19 (N.D. Ill. Aug. 11, 1992) ("The right to a jury trial is a procedural rule which can be applied retroactively."). *But see Baynes*, No. 91-8488, 1992 U.S. App. LEXIS 26892, at *10-*11 (holding it would be a manifest injustice to apply the Act's jury trial right to pending cases, because the Act as a whole changes substantive obligations as well as procedural rights). By analogy, in applying the jury trial right to pending cases under the 1978 amendments to the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*, the Sixth Circuit held that a jury resolution of a plaintiff's claims poses no threat of injustice to either party. *Scarboro v. First Am. Nat'l Bank*, 619 F.2d 621, 622 (6th Cir.), *cert. denied*, 449 U.S. 1014 (1980).

In holding that the jury trial right does not apply to this case, the Fifth Circuit reasoned that to retry the case would be "an injustice and a waste of judicial resources." (App. A-9) The Fifth Circuit's concern with injustice was concern lest the "settled expectations of the parties" be disturbed. *Id.* But parties do not plan their actions by considering whether they will receive a jury trial should they run afoul of the law. Nor should the argument about judicial resources overcome the right to a procedure Congress has guaranteed by statute. The Fifth Circuit failed to overcome the reasoning of the other courts that have considered whether the Act's procedural rights should be applicable to pending cases.

Because the Fifth Circuit misapplied the *Bradley* test, denying Ms. Landgraf—whose Title VII rights unquestionably were violated—the relief and procedural protection to which she is entitled under the Act, petitioner urges the Court to issue a writ of *certiorari*.

CONCLUSION

For the reasons stated above, petitioner Barbara Landgraf requests this Court to issue a writ of *certiorari* to review the decision of the Court of Appeals for the Fifth Circuit.

October 28, 1992.

Respectfully submitted,

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APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JULY 30, 1992

No. 91-4485

UNITED STATES COURT OF APPEALS,
FOR THE FIFTH CIRCUIT

July 30, 1992

Barbara LANDGRAF,
Plaintiff-Appellant,

v.

USI FILM PRODUCTS, Bonar Packaging, Inc., and Quantum Chemical Corporation,
Defendants-Appellees.

Timothy B. Garrigan, Stuckey & Garrigan, Nacogdoches, Tex., for plaintiff-appellant.

Gregory D. Smith, Mike A. Hatchell, Ramey, Flock, Jeffus, Crawford, Harper & Collins, Tyler, Tex., for Bonar, USI, Quantum.

Appeal from the United States District Court for the Eastern District of Texas.

Before GOLDBERG, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

Barbara Landgraf brought suit against her employer asserting sexual harassment and retaliation claims under Title VII. After a bench trial, the district court entered judgment in favor of the defendants. Although the district court found that sexual harassment had occurred, it concluded that Landgraf had not been constructively discharged and therefore was not entitled to any relief under Title VII. Landgraf asserts on appeal that the district court clearly erred in finding that she was not constructively

discharged and that the district court erred in failing to make factual findings on her retaliation claim. She also argues that she is entitled to nominal damages even if she is unable to demonstrate a constructive discharge. Finally, she asserts that the damage and jury trial provisions of the Civil Rights Act of 1991 should be applied retroactively to her case. We affirm the district court's judgment in all respects and find that the Civil Rights Act of 1991 does not apply to this case.

I.

Landgraf worked for USI Film Products in its Tyler, Texas production plant on the 11:00 p.m. to 7:00 a.m. shift. From September 1984 to January 1986, she was employed as a materials handler operating a machine which produced several thousand plastic bags per shift. While she worked at the plant, fellow employee John Williams subjected her to what the district court described as "continuous and repeated inappropriate verbal comments and physical contact." The district court found that this sexual harassment was severe enough to make USI a "hostile work environment" for purposes of Title VII liability. The harassment was made more difficult for Landgraf because Williams was a union steward and was responsible for repairing and maintaining the machine Landgraf used in her work.

Landgraf told her supervisor, Bobby Martin, about Williams' harassment on several occasions but Martin took no action to prevent the harassment from continuing. Only when Landgraf reported the harassment to USI's personnel manager, Sam Forsgard, was Williams' behavior investigated. By interviewing the other female employees at the plant, the investigation found that four women corroborated Landgraf's reports of Williams' engaging in inappropriate touching and three women reported verbal harassment.

Williams denied the charges, contending that "they are all lying." Williams was given a written reprimand for his behavior, but was not suspended, although the written policies of USI list sexual harassment as an action "requiring suspension or dismissal." He was technically transferred to another department,

however, USI officials conceded that he would still be in Landgraf's work area on a regular basis. This transfer was not a form of discipline against Williams; as soon as Landgraf resigned he was transferred back to the original department.

The investigation dealt not only with Williams' behavior but also involved questioning employees about their relationship with Landgraf. On January 13, 1986, Forsgard, Wilson, and Martin met with Landgraf. According to Wilson's notes describing the meeting, Forsgard first told Landgraf that her claim had been investigated and that USI had taken the action it deemed appropriate. The meeting then turned to focus on Landgraf's problems in getting along with her co-workers. She was told that she was very unpopular and was "among [her] own worst enemies." When Landgraf asked whether anything was going to happen to Williams she was told that USI had taken what it considered appropriate action and to notify them if Williams attempted to take revenge.

After working just two more shifts, Landgraf left her job at USI. She left a letter addressed to her colleagues stating that "the stress that each one of you help [sic] to put on me, caused me to leave my job." The letter did not refer to the sexual harassment or to Williams by name. Approximately two days later, Landgraf spoke to her supervisor about her decision to resign and specifically attributed it to the harassment by Williams.

II.

It is uncontested that Barbara Landgraf suffered significant sexual harassment at the hands of John Williams during her employment with USI. This harassment was sufficiently severe to support a hostile work environment claim under Title VII. *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986). She reported this harassment to her employer through supervisor Bobby Martin on several occasions and no corrective action was timely taken.

Because Landgraf voluntarily left her employment at USI, however, she must demonstrate that she was constructively

discharged in order to recover back pay as damages. In order to demonstrate constructive discharge, she must prove that "working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign." *Bourque v. Powell Electrical Mfg. Co.*, 617 F.2d 61, 65 (5th Cir. 1980); *Jurgens v. EEOC*, 903 F.2d 386, 390-91 (5th Cir. 1990). The district court found that the sexual harassment by Williams was not severe enough that a reasonable person would have felt compelled to resign. This conclusion was strengthened by the district court's finding that at the time Landgraf resigned USI was taking action reasonably calculated to alleviate the harassment. The district court further found that "as evidenced by the language in her resignation letter, Landgraf's motivation for quitting her employment with USI was the conflicts and unpleasant relationships she had with her co-workers."

Landgraf argues first that the district court clearly erred in finding that USI had taken steps reasonably calculated to end the harassment. We disagree. Our review of the district court's factual finding is limited. As the Supreme Court has recently described the scope of our review: "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Anderson v. Bessemer City*, 470 U.S. 564, 573-74, 105 S.Ct. 1504, 1511-12, 84 L. Ed.2d 518 (1985). There was evidence that USI had given Williams its most serious form of reprimand and acted to reduce his contact with Landgraf at the workplace. Landgraf testified that Williams continued to harass her after his reprimand, however, she did not report these incidents to USI before resigning. Title VII does not require that an employer use the most serious sanction available to punish an offender, particularly where, as here, this was the first documented offense by an individual employee. The district court did not clearly err in concluding that USI took steps reasonably calculated to end the harassment.

Landgraf argues that the finding of no constructive discharge was clearly erroneous. We disagree. The district court, after

hearing all the testimony in this case, concluded that Landgraf resigned for reasons unrelated to sexual harassment. The evidence in this case presented two possible reasons for Landgraf's decision to resign: problems with her co-workers, as evidenced by her note or sexual harassment as stated in conversation with Bobby Martin. Landgraf testified at trial that the sexual harassment was the reason for her resignation. She also stated that the reference to "the devil [who] has been your leader so far" in her resignation note was actually a reference to Williams. The district court concluded based upon this testimony and the note itself that the problems with her co-workers actually caused her resignation. Given these two plausible interpretations of the evidence, we must affirm the district court's finding. Landgraf also asserts that the conflicts she had with her co-workers were as a result of her problems with Williams. There was conflicting evidence on this question and the district court specifically found that Landgraf's conflict with her co-workers was unrelated to the sexual harassment by Williams. The district court did not clearly err in finding that Landgraf left her employment at USI for reasons unrelated to sexual harassment.

Moreover, even if the reason for Landgraf's departure was the harassment by Williams, the district court found that, particularly in light of the corrective actions taken by USI immediately before Landgraf resigned, the level of harassment was insufficient to support a finding of constructive discharge. To prove constructive discharge, the plaintiff must demonstrate a greater severity or pervasiveness of harassment than the minimum required to prove a hostile working environment. *Pittman v. Hattiesburg Municipal Separate School District*, 644 F.2d 1071, 1077 (5th Cir. 1981) (constructive discharge requires "aggravating factors"). The harassment here, while substantial, did not rise to the level of severity necessary for constructive discharge. Although USI's investigation of this incident may not have been overly sensitive to Landgraf's state of mind, the company had taken steps to alleviate the situation and told Landgraf to let them know of any further problems. A reasonable employee would not have felt compelled to resign immediately following the institution of measures which the district court found to be reasonably

calculated to stop the harassment. We cannot say that the district court clearly erred in rejecting the claim of constructive discharge.

III.

Landgraf asserts that the district court erred in failing to make findings of fact and conclusions of law with regard to her retaliation claim against USI. USI argues that no findings on the retaliation claim are necessary because Landgraf failed to prevail on her claim of constructive discharge. We agree.

An adverse negative employment action is a required element of a retaliation claim. *Collins v. Baptist Memorial Geriatric Center*, 937 F.2d 190, 193 (5th Cir. 1991). The only possible adverse employment action that Landgraf suffered after she complained to Martin about the sexual harassment would be the alleged constructive discharge. Because the district court found that the reason Landgraf resigned her position was her trouble getting along with her co-workers, she cannot prove constructive discharge on the basis of retaliation. As noted above, Landgraf asserts that her troubles with her co-workers were as a result of her complaints about Williams' harassment. However, the district court explicitly found to the contrary and we cannot say that that finding was clearly erroneous. Accordingly, Landgraf's retaliation claim cannot prevail because she suffered no adverse employment action as a result of her complaints. *Collins*, 937 F.2d at 193.

IV.

Landgraf argues that even if she fails to demonstrate that she was constructively discharged, she may still be awarded nominal damages which would carry with them an award of attorneys' fees. We recognize that some confusion may have arisen from our statement in *Joshi v. Florida State Univ.*, 646 F.2d 981, 991 n.3 (5th Cir. Unit B 1981), indicating in dicta that in some cases an employee who suffered from illegal discrimination but was ineligible for back pay might be entitled to nominal damages. Several circuit courts have explicitly held that such nominal

damages are available under Title VII in some cases. *Huddleston v. Roger Dean Chevrolet*, 845 F.2d 900, 905 (11th Cir. 1988); *Baker v. Weyerhaeuser Co.*, 903 F.2d 1342 (10th Cir. 1990). *See also Katz v. Dole*, 709 F.2d 251, 253 n.1 (4th Cir. 1983); *T & S Service Associates v. Crenson*, 666 F.2d 722, 728 n.8 (1st Cir. 1981). Only the Seventh Circuit has directly rejected the award of nominal damages as relief in Title VII cases. *Bohen v. City of East Chicago, Indiana*, 799 F.2d 1180, 1184 (7th Cir. 1986).

We conclude that the *Bohen* court's rejection of nominal damages as a Title VII remedy is the correct interpretation of the statutory scheme.[1] Title VII provides that where a court finds that an employer has engaged in unlawful employment practices, it may order action "which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay, . . . or any other equitable relief as the court deems appropriate." 42 U.S.C. § 2000e-5(g). We have consistently interpreted this provision to mean that "only equitable relief is available under Title VII." *Bennett v. Corroon & Black Corp.*, 845 F.2d 104, 106 (5th Cir. 1988). Nominal damages such as those awarded in *Huddleston* and *Baker* are legal, not equitable relief and are therefore outside the scope of remedies available under Title VII. *Bohen*, 799 F.2d at 1184 (damages unavailable to redress Title VII violations that do not result in discharge).

Landgraf also asserts that she is entitled to equitable relief in the form of a declaratory judgment, relying on the Eighth Circuit's opinion in *Bibbs v. Block*, 778 F.2d 1318 (8th Cir. 1985). We conclude that no declaratory judgment is appropriate in this case. The purpose of equitable relief under Title VII is "to restore the victim of discrimination to fruits and status of employments as if there had been no discrimination." *Bennett*, 845 F.2d at 106. Here, because Landgraf voluntarily left her employment she was not deprived of any fruits of employment

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[1] We note, of course that under the amendments to Title VII in the Civil Rights Act of 1991, remedies will no longer be limited to equitable relief. However, for the reasons discussed below, those amendments do not apply to this case.

as a result of the sexual harassment. Her argument that she is entitled to a declaratory judgment for purposes of vindication because she prevailed on the issue of whether sexual harassment occurred must also fail. *See LaBoeuf v. Ramsey*, 503 F.Supp. 747 (D. Mass. 1980) (allowing declaratory judgment for purposes of vindication). USI did not dispute at trial the fact of Landgraf's sexual harassment. The only issues disputed were the propriety of USI's reaction to the harassment and Landgraf's reason for resigning. Landgraf did not prevail on either of these issues and the district court did not err in refusing to grant a declaratory judgment.

V.

Finally, we address the question of whether any provisions of the Civil Rights Act of 1991 apply to this case. Two provisions of the Act would affect this case if applicable: the addition of compensatory and punitive damages and the availability of a jury trial. Civil Rights Act of 1991, Pub.L. No. 102-166, §§ 102(a)(1), 102(c), 105 Stat. 1072-73 (1991).

We recently addressed the issue of the Act's retroactivity in *Johnson v. Uncle Ben's, Inc.*, 965 F.2d 1363 (5th Cir. 1992), where we joined the other circuit courts which have ruled on the issue in holding that § 101(2)(b) of the Act does not apply to conduct occurring before the effective date of the Act. *See Luddington v. Indiana Bell Telephone Co.*, 966 F.2d 225 (7th Cir. 1992); *Fray v. Omaha World Herald Co.*, 960 F.2d 1370 (8th Cir. 1992); *Vogel v. City of Cincinnati*, 959 F.2d 594 (6th Cir. 1992). We need not repeat here our discussion of the legislative history of the Act. For the reasons explained in *Johnson*, we conclude that there is no clear congressional intent on the general issue of the Act's application to pending cases. We must therefore turn to the legal principles applicable to statutes where Congress has remained silent on their retroactivity.

As we noted in *Johnson* the legal principles surrounding the retroactive application of statutes are somewhat uncertain in light of the Supreme Court's decisions in *Bradley v. Richmond School Board*, 416 U.S. 696, 94 S.Ct. 2006, 40 L. Ed. 2d 476 (1974) and

Bowen v. Georgetown University Hospital, 488 U.S. 204, 109 S.Ct. 468, 102 L.Ed.2d 493 (1988). We need not resolve the recognized tension between the *Bradley* and *Bowen* cases, however, in order to resolve the issue facing us here. *See Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 837, 110 S.Ct. 1570, 1572, 108 L.Ed.2d 842 (1990). Even under the standard set forth in *Bradley* we conclude that these two provisions of the Act should not be applied retroactively to this case.

The rule set forth in *Bradley* is that a court must "apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." *Bradley*, 416 U.S. at 711, 94 S.Ct. at 2016. In determining whether retroactive application of a statute will wreak injustice, we consider "(a) the nature and identity of the parties, (b) the nature of their rights, and (c) the nature of the impact of the change in law upon those rights." *Belser v. St. Paul Fire and Marine Ins. Co.*, 965 F.2d 5 (5th Cir. 1992), citing *Bradley*, 416 U.S. at 717, 94 S.Ct. at 2019.

We turn first to the provision allowing either party to request a jury trial. When this case was tried in February 1991, the district court applied the law in effect at that time when it conducted a bench trial on the Title VII claims. We are not persuaded that Congress intended to upset cases which were properly tried under the law at the time of trial. *See Bennett v. New Jersey*, 470 U.S. 632, 105 S.Ct. 1555, 84 L.Ed.2d 572 (1985) (Court would not presume that Congress intended new grant regulations to govern review of prior grants). To require USI to retry this case because of a statutory change enacted after the trial was completed would be an injustice and a waste of judicial resources. We apply procedural rules to pending cases, but we do not invalidate procedures followed before the new rule was adopted. *Belser*, 965 F.2d 5 at 9.

We now turn to whether the Act's provisions for compensatory and punitive damages apply to pending cases. We conclude that they do not. Retroactive application of this provision to conduct occurring before the Act would result in a manifest

injustice. The addition of compensatory and punitive damages to the remedies available to a prevailing Title VII plaintiff does not change the scope of the statute's coverage. That does not mean, however, that these are inconsequential changes in the Act. As Judge Posner notes in *Luddington*, "such changes can have as profound an impact on behavior outside the courtroom as avowedly substantive changes." Unlike allowing prevailing plaintiffs to recover attorneys' fees as in *Bradley*, the amended damage provisions of the Act are a seachange in employer liability for Title VII violations. For large employers, the total of compensatory and punitive damage for which they are potentially liable can reach $300,000 per claim. Civil Rights Act of 1991, § 102(b)(3).

The measure of manifest injustice under *Bradley* is not controlled by formal labels of substantive or remedial changes. Instead, we focus on the practical effects the amendments have upon the settled expectations of the parties. There is a practical point at which a dramatic change in the remedial consequences of a rule works change in the normative reach of the rule itself. It would be an injustice within the meaning of *Bradley* to charge individual employers with anticipating this change in damages available under Title VII. Unlike *Bradley*, where the statutory change provided only an additional basis for relief already available, compensatory and punitive damages impose "an additional or unforeseeable obligation" contrary to the well-settled law before the amendments. 416 U.S. at 721, 94 S.Ct. at 2021. We conclude that the damage provisions of the Civil Rights Act of 1991 do not apply to conduct occurring before its effective date.

The judgment of the district court is AFFIRMED.

APPENDIX B

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

May 22, 1991

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

May 22, 1991

BARBARA LANDGRAF	§	
	§	
VS.	§	CIVIL ACTION
	§	NO. TY-89-435-CA
USI FILM PRODUCTS,	§	
QUANTUM CHEMICAL	§	
CORPORATION and	§	
BONAR PACKAGING, INC.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Fed. R. Civ. P. 52(a), the Court enters its Findings of Fact and Conclusions of Law in this action.

I. FINDINGS OF FACT

1. During the course of her employment at USI Film Products ("USI") in Tyler, Texas, Plaintiff Barbara Landgraf ("Landgraf") was subjected to sexual harassment. The sexual harassment consisted of continuous and repeated inappropriate verbal comments and physical contact, the source of which was a fellow employee named John Williams.

2. Landgraf reported the sexual harassment to her immediate supervisor, Bobby Martin, on several occasions.

3. Martin took no actions reasonably calculated to halt the harassment.

4. Landgraf eventually reported the harassment to Sam Forsgard, who handled personnel matters at USI.

5. Forsgard immediately conducted an appropriate investigation into the allegations. Interviews with other female employees substantiated Landgraf's complaints of sexual harassment by John Williams. After a hearing on the harassment with Williams, he was transferred to another department as a remedial measure.

6. The remedial measures instituted by Forsgard alleviated the harassment Landgraf was subjected to by Williams.

7. Shortly after Forsgard instituted remedial measures regarding the harassment, Landgraf resigned her employment at USI.

8. Landgraf experienced difficulty in getting along with her co-workers. This situation was unrelated to the sexual harassment by John Williams.

9. As evidenced by the language in her resignation letter, Landgraf's motivation for quitting her employment with USI was the conflicts and unpleasant relationships she had with her co-workers.

10. Landgraf suffered mental anguish as a result of the sexual harassment she was subjected to while working at USI.

II. CONCLUSIONS OF LAW

1. A plaintiff must establish five elements in order to state a prima facie case of sexual harassment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*:

(1) The employee belongs to a protected group;

(2) The employee was subject to unwelcome sexual harassment;

(3) The harassment complained of was based on sex;

(4) The harassment complained of affected a "term, condition or privilege of employment"; and,

(5) Respondeat superior, i. e., that the employer knew or should have known of the harassment in question and failed to take prompt remedial action.

Waltman v. International Paper Co., 875 F.2d 468, 477 (5th Cir. 1989).

2. Landgraf was subjected to harassment sufficiently severe to alter the conditions of Landgraf's employment and create an abusive working environment sufficient to support Landgraf's "hostile environment" claim. *See Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986).

3. Bobby Martin held a management position over Landgraf as her immediate supervisor. Landgraf's complaints to Martin constituted actual notice of the harassment to Landgraf's employer, USI. *See Waltman*, 875 F.2d at 478.

4. Because of Martin's repeated failure to take action when Landgraf reported the harassment to him, USI failed to take prompt remedial action to alleviate the sexual harassment to which Landgraf was subjected.

5. The evidence establishes a prima facie case that Landgraf suffered sexual harassment in violation of Title VII.

6. Landgraf was not constructively discharged from her employment with USI. In order to find that Landgraf was constructively discharged as a result of the sexual harassment, the discriminatory working conditions must have been so difficult or unpleasant that a reasonable person in Landgraf's position would have felt compelled to resign. *Borque v. Powell Electrical Manufacturing Co.*, 617 F.2d 61, 65 (5th Cir. 1980).

Although the harassment was serious enough to establish that a hostile work environment existed for Landgraf, it was not so severe that a reasonable person would have felt compelled to resign. This is particularly true in light of the fact that at the time Landgraf resigned from her job, USI had taken steps through Sam Forsgard to eliminate the hostile working environment arising from the sexual harassment. Landgraf voluntarily resigned from

her employment with USI for reasons unrelated to the sexual harassment in question.

7. The Court must now decide the issue of whether Landgraf is entitled to any recovery under Title VII in light of the determinations that Landgraf suffered from sexual harassment during her employment but that such harassment did not result in her discharge or termination, constructive or otherwise. Although the Fifth Circuit has not ruled on this exact point, it has been suggested in *dicta* that in such a situation nominal damages might be awarded as a remedy which would carry with it the awarding of attorney's fees and costs. *Joshi v. Florida State University*, 646 F.2d 981, 991 n. 33 (5th Cir. 1981). At least one other circuit has held that a plaintiff who establishes a prima facie case of sexual harassment can recover damages without a finding that she was discharged. *See Huddleston v. Roger Dean Chevrolet, Inc.*, 845 F.2d 900, 905 (11th Cir. 1988).

The statutory language of Title VII provides that "the court may . . . order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement . . . , back pay . . . , or any other equitable relief as the court deems appropriate." 42 U.S.C. § 2000e-5(g). The Seventh Circuit has noted that "[s]ince damages are not equitable relief, most courts have held that damages are not available to redress violations of Title VII that do not result in discharge." *Bohen v. City of East Chicago, Indiana*, 799 F.2d 1180, 1184 (7th Cir. 1986) (and cases cited therein).

The Court agrees with the Seventh Circuit's conclusion in *Bohen*:

> We believe the better view, in accord with the majority of decisions, is that no damages are available under Title VII. If Congress wishes to amend the provisions of Title VII to provide a remedy of damages, it can do so. Until then, this court may only enforce the statute as written, and as currently written Title VII does not contemplate damages.

Id.

The Court finds that Landgraf is not entitled to equitable relief because her employment was not terminated in violation of Title VII. The Court further finds that Landgraf is not entitled to recover damages under 42 U.S.C. § 2000e-5(g).

8. Landgraf has conceded that her pendent state claims for intentional and negligent infliction of emotional distress are barred by the applicable statute of limitations.

Accordingly, IT IS ORDERED that Plaintiff's pendent state claims are DISMISSED with prejudice.

9. Costs shall be paid by the party incurring the same.

SIGNED this 20th day of May, 1991.

ROBERT M. PARKER, CHIEF JUDGE

APPENDIX C

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

May 22, 1991

C-1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

May 22, 1991

BARBARA LANDGRAF	§	
	§	
VS.	§	CIVIL ACTION
	§	NO. TY-89-435-CA
USI FILM PRODUCTS,	§	
QUANTUM CHEMICAL	§	
CORPORATION and	§	
BONAR PACKING, INC.	§	

JUDGMENT

IT IS ORDERED that Plaintiff Barbara Landgraf take nothing against Defendants USI Film Products, Quantum Chemical Corporation and Bonar Packaging, Inc.

SIGNED this 20th day of May, 1991.

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ROBERT M. PARKER, CHIEF JUDGE

APPENDIX D

THE CIVIL RIGHTS ACT OF 1991

Public Law 102-166
102d Congress

An Act

To amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in Griggs v.

Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

SEC. 101. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.".

SEC. 102. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.—

"(1) CIVIL RIGHTS.—In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (42 U.S.C. 2000e-2 or 2000e-3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(2) DISABILITY.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(3) REASONABLE ACCOMMODATION AND GOOD FAITH EFFORT.—In cases where a discriminatory practice

involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 or regulations implementing section 501 of the Rehabilitation Act of 1973, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

"(b) COMPENSATORY AND PUNITIVE DAMAGES.—

"(1) DETERMINATION OF PUNITIVE DAMAGES.—A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES.—Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.—The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

"(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more

calendar weeks in the current or preceding calendar year, $100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

"(4) CONSTRUCTION.—Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

"(c) JURY TRIAL.—If a complaining party seeks compensatory or unitive [sic] damages under this section—

"(1) any party may demand a trial by jury; and

"(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

"(d) DEFINITIONS.—As used in this section:

"(1) COMPLAINING PARTY.—The term 'complaining party' means—

"(A) in the case of a person seeking to bring an action under subsection (a)(1), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

"(B) in the case of a person seeking to bring an action under subsection (a)(2), the Equal Employment Opportunity Commission, the Attorney General, a person who may bring an action or proceeding under section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(2) DISCRIMINATORY PRACTICE.—The term 'discriminatory practice' means the discrimination described in paragraph (1), or the discrimination or the violation described in paragraph (2), of subsection (a).

SEC. 103. ATTORNEY'S FEES.

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting ", 1977A" after "1977".

SEC. 104. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to Section 717.".

SEC. 105. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

(a) Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) is amended by adding at the end the following new subsection:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title only if—

"(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

"(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

"(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

"(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of 'alternative employment practice'.

"(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.".

(b) No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act that relates to Wards Cove—Business necessity/cumulation/alternative business practice.

SEC. 106. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by Section 105) is further amended by adding at the end the following new subsection:

"(l) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.".

SEC. 107. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) **IN GENERAL**—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by Sections 105 and 106) is further amended by adding at the end the following new subsection:

"(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.".

(b) **ENFORCEMENT PROVISIONS.**—Section 706(g) of such Act (42 U.S.C. 2000e-5(g)) is amended—

(1) by designating the first through third sentences as paragraph (1);

(2) by designating the fourth sentence as paragraph (2)(A) and indenting accordingly; and

(3) by adding at the end the following new subparagraph:

"(B) On a claim in which an individual proves a violation under section 703(m) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

"(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 703(m); and

"(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).".

SEC. 108. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by sections 105, 106, and 107 of this title) is further amended by adding at the end the following new subsection:

"(n)(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

"(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

"(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

"(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

"(II) a reasonable opportunity to present objections to such judgment or order; or

"(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

"(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

"(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.".

SEC. 109. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) DEFINITION OF EMPLOYEE.—Section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) and section 101(4) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(4)) are each amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.".

(b) EXEMPTION.—

(1) CIVIL RIGHTS ACT OF 1964.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) is amended—

(A) by inserting "(a)" after Sec. 702."; and

(B) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

"(c)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Sections 703 and 704 shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on--

"(A) the interrelation of operations;

"(B) the common management;

"(C) the centralized control of labor relations; and

"(D) the common ownership or financial control, of the employer and the corporation.".

(2) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) COVERED ENTITIES IN FOREIGN COUNTRIES.—

"(1) IN GENERAL.—It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee

in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

"(2) CONTROL OF CORPORATION.—

"(A) PRESUMPTION.—If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(B) EXCEPTION.—This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(C) DETERMINATION.—For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership of financial control, of the employer and the corporation.".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

SEC. 110. TECHNICAL ASSISTANCE TRAINING INSTITUTE.

(a) TECHNICAL ASSISTANCE.—Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4) is amended by adding at the end the following new subsection:

"(j)(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

"(2) An employer or other entity covered under this title shall not be excused from compliance with the requirements of this title because of any failure to receive technical assistance under this subsection.

"(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 111. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraph:

"(2) In exercising its powers under this title, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

"(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

"(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination,

concerning rights and obligations under this title or such law, as the case may be.".

SEC. 112. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended—

(1) by inserting "(1)" before "A charge under this section"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by

the application of the seniority system or provision of the system.".

SEC. 113. AUTHORIZING AWARD OF EXPERT FEES.

(a) REVISED STATUTES.—Section 722 of the Revised Statutes is amended—

(1) by designating the first and second sentences as subsections (a) and (b), respectively, and indenting accordingly; and

(2) by adding at the end the following new subsection:

"(c) In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1977 or 1977A of the Revised Statutes, the court, in its discretion, may include expert fees as part of the attorney's fee.".

(b) CIVIL RIGHTS ACT OF 1964.—Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended by inserting "(including expert fees)" after "attorney's fee".

SEC. 114. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection (c), by striking "thirty days" and inserting "90 days"; and

(2) in subsection (d), by inserting before the period", and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.".

SEC. 115. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking paragraph (2);

(2) by striking the paragraph designation in paragraph (1);

(3) by striking "Section 6 and" and inserting "Section"; and

(4) by adding at the end the following:

"If a charge filed with the Commission under this Act is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 11(a) against the respondent named in the charge within 90 days after the date of the receipt of such notice.".

SEC. 116. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this title shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

SEC. 117. COVERAGE OF HOUSE OF REPRESENTATIVES AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988), as incorporated into the Rules of the House of Representatives of the One Hundred Second Congress as Rule LI, or any other provision that continues in effect the provisions of such resolution.

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(b) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this title and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 301(c)(1).

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of title VII for the Civil Rights Act of 1964 (42 U.S.C. 2000e-16).

SEC. 118. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.

TITLE II—GLASS CEILING

SEC. 201. SHORT TITLE.

This title may be cited as the "Glass Ceiling Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.— Congress finds that—

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and

are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" undertaken by the Department of Labor, including the release of the report entitled "Report on the Glass Ceiling Initiative", has been instrumental in raising public awareness of—

(A) the underrepresentation of women and minorities at the management and decisionmaking levels in the United States work force;

(B) the underrepresentation of women and minorities in line functions in the United States work force;

(C) the lack of access for qualified women and minorities to credential-building developmental opportunities; and

(D) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business; and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in which management and decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to management and decisionmaking positions; and

(7) a national award recognizing employers whose practices and policies promote opportunities for, and eliminate artificial barriers to, the advancement of women and minorities will foster the advancement of women and minorities into higher level positions by—

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate artificial barriers to, the upward mobility of women and minorities; and

(B) providing specific guidance for other United States employers that wish to learn how to revise practices and policies to improve the access and employment opportunities of women and minorities.

(b) PURPOSE.—The purpose of this title is to establish—

(1) a Glass Ceiling Commission to study—

(A) the manner in which business fills management and decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

SEC. 203. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) IN GENERAL.—There is established a Glass Ceiling Commission (referred to in this title as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to management and decisionmaking positions in business.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, including—

(A) six individuals appointed by the President;

(B) six individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and

(I) the Secretary of Labor.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold management or decisionmaking positions in corporation or other business entities recognized as leaders on issues relating to equal employment opportunity; and

(C) possess academic expertise or other recognized ability regarding employment issues.

(3) BALANCE.—In making the appointments under subparagraphs (A) and (B) of paragraph (1), each appointing authority shall seek to include an appropriate balance of appointees from among the groups of appointees described in subparagraphs (A), (B), and (C) of paragraph (2).

(c) CHAIRPERSON.—The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) TERM OF OFFICE.—Members shall be appointed for the life of the Commission.

(e) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(h) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code; and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 204. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO MANAGEMENT AND DECISIONMAKING POSITIONS IN BUSINESS.

(a) ADVANCEMENT STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business. In conducting the study, the Commission shall—

(1) examine the preparedness of women and minorities to advance to management and decisionmaking positions in business;

(2) examine the opportunities for women and minorities to advance to management and decisionmaking positions in business;

(3) conduct basic research into the practices, policies, and manner in which management and decisionmaking positions in business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to management and decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to management and decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to management and decisionmaking positions in business.

(b) REPORT.—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business, including recommendations for—

(A) policies and practices to fill vacancies at the management and decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume management and decisionmaking positions;

(C) compensation programs and reward structures utilized to reward and retain key employees; and

(D) the use of enforcement (including such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(c) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to management and decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 205. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) IN GENERAL.—There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "Frances Perkins-Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Commission determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Commission, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) PUBLICITY.—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help

other United States businesses improve with respect to the promotion of opportunities and developmental experiences of women and minorities to foster the advancement of women and minorities to management and decisionmaking positions.

(d) BUSINESS.—For the purposes of this section, the term "business" includes—

(1)(A) a corporation including nonprofit corporations;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in subparagraphs (A) through (D);

(2) an education referral program, a training program, such as an apprenticeship or management training program or a similar program; and

(3) a joint program formed by a combination of any entities described in paragraph (1) or (2).

SEC. 206. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(d) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the

Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 207. CONFIDENTIALITY OF INFORMATION.

(a) INDIVIDUAL BUSINESS INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in sections 204 and 205, the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(b) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 208. STAFF AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the compensation of

such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(2) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Chairperson of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(c) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) TECHNICAL ASSISTANCE.—On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title. The sums shall remain available until expended, without fiscal year limitation.

SEC. 210. TERMINATION.

(a) COMMISSION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

(b) AWARD.—The authority to make awards under section 205 shall terminate 4 years after the date of the enactment of this Act.

TITLE III—GOVERNMENT EMPLOYEE RIGHTS

SEC. 301. GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

(a) SHORT TITLE.—This title may be cited as the "Government Employee Rights Act of 1991".

(b) PURPOSE.—The purpose of this title is to provide procedures to protect the right of Senate and other government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) DEFINITIONS.—For purposes of this title:

(1) SENATE EMPLOYEE.—The term "Senate employee" or "employee" means—

(A) any employee whose pay is disbursed by the Secretary of the Senate;

(B) any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;

(C) any applicant for a position that will last 90 days or more and that is to be occupied by an individual described in subparagraph (A) or (B); or

(D) any individual who was formerly an employee described in subparagraph (A) or (B) and whose claim of a violation arises out of the individual's Senate employment.

(2) HEAD OF EMPLOYING OFFICE.—The term "head of employing office" means the individual who has final authority to appoint, hire, discharge, and set the terms, conditions or privileges of the Senate employment of an employee.

(3) VIOLATION.—The term "violation" means a practice that violates section 302 of this title.

SEC. 302. DISCRIMINATORY PRACTICES PROHIBITED.

All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102-104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112-14).

SEC. 303. ESTABLISHMENT OF OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES.

(a) IN GENERAL.—There is established, as an office of the Senate, the Office of Senate Fair Employment Practices (referred to in this title as the "Office"), which shall—

(1) administer the processes set forth in sections 305 through 307;

(2) implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President pro tempore, upon the recommendation of the Majority Leader in consultation with

the Minority Leader. The appointment shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed. A Director may be reappointed at the termination of any term of service. The President pro tempore, upon the joint recommendation of the Majority Leader in consultation with the Minority Leader, may remove the Director at any time.

(2) SALARY.—The President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader, shall establish the rate of pay for the Director. The salary of the Director may not be reduced during the employment of the Director and shall be increased at the same time and in the same manner as fixed statutory salary rates within the Senate are adjusted as a result of annual comparability increases.

(3) ANNUAL BUDGET.—The Director shall submit an annual budget request for the Office to the Committee on Appropriations.

(4) APPOINTMENT OF DIRECTOR.—The first Director shall be appointed and begin service within 90 days after the date of enactment of this Act, and thereafter the Director shall be appointed and begin service within 30 days after the beginning of the session of the Congress immediately following the termination of a Director's term of service or within 60 days after a vacancy occurs in the position.

(c) STAFF OF THE OFFICE.—

(1) APPOINTMENT.—The Director may appoint and fix the compensation of such additional staff, including hearing officers, as are necessary to carry out the purposes of this title.

(2) DETAILEES.—The Director may, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, use on a reimbursable or nonreimbursable basis the services of any such department or agency, including the services of members

or personnel of the General Accounting Office Personnel Appeals Board.

(3) CONSULTANTS.—In carrying out the functions of the Office, the Director may procure the temporary (not to exceed 1 year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) EXPENSES OF THE OFFICE.—In fiscal year 1992, the expenses of the Office shall be paid out of the Contingent Fund of the Senate from the appropriation account Miscellaneous Items. Beginning in fiscal year 1993, and for each fiscal year thereafter, there is authorized to be appropriated for the expenses of the Office such sums as shall be necessary to carry out its functions. In all cases, expenses shall be paid out of the Contingent Fund of the Senate upon vouchers approved by the Director, except that a voucher shall not be required for—

(1) the disbursement of salaries of employees who are paid at an annual rate;

(2) the payment of expenses for telecommunications services provided by the Telecommunications Department, Sergeant at Arms, United States Senate;

(3) the payment of expenses for stationery supplies purchased through the Keeper of the Stationery, United States Senate;

(4) the payment of expenses for postage to the Postmaster, United States Senate; and

(5) the payment of metered charges on copying equipment provided by the Sergeant at Arms, United States Senate.

The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out this title. Expenses of the Office shall include authorized travel for personnel of the Office.

(e) RULES OF THE OFFICE.—The Director shall adopt rules governing the procedures of the Office, including the procedures of hearing boards, which rules shall be submitted to the President pro tempore for publication in the Congressional Record. The rules may be amended in the same manner. The

Director may consult with the Chairman of the Administrative Conference of the United States on the adoption of rules.

(f) REPRESENTATION BY THE SENATE LEGAL COUNSEL.—For the purpose of representation by the Senate Legal Counsel, the Office shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978 (2 U.S.C. 288, et seq.).

SEC. 304. SENATE PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

The Senate procedure for consideration of alleged violations consists of 4 steps as follows:

(1) Step I, counseling, as set forth in section 305.

(1) Step II, mediation, as set forth in section 306.

(3) Step III, formal complaint and hearing by a hearing board, as set forth in section 307.

(4) Step IV, review of a hearing board decision, as set forth in section 308 or 309.

SEC. 305. STEP I: COUNSELING.

(a) IN GENERAL.—A Senate employee alleging a violation may request counseling by the Office. The Office shall provide the employee with all relevant information with respect to the rights of the employee. A request for counseling shall be made not later than 180 days after the alleged violation forming the basis of the request for counseling occurred. No request for counseling may be made until 10 days after the first Director begins service pursuant to section 303(b)(4).

(b) PERIOD OF COUNSELING.—The period for counseling shall be 30 days unless the employee and the Office agree to reduce the period. The period shall begin on the date the request for counseling is received.

(c) EMPLOYEES OF THE ARCHITECT OF THE CAPITOL AND CAPITOL POLICE.—In the case of an employee of the Architect of the Capitol or an employee who is a member of the Capitol Police, the Director may refer the employee to the Architect of the Capitol or the Capitol Police Board for resolution

of the employee's complaint through the internal grievance procedures of the Architect of the Capitol or the Capitol Police Board for a specific period of time, which shall not count against the time available for counseling or mediation under this title.

SEC. 306. STEP II: MEDIATION.

(a) IN GENERAL.—Not later than 15 days after the end of the counseling period, the employee may file a request for mediation with the Office. Mediation may include the Office, the employee, and the employing office in a process involving meetings with the parties separately or jointly for the purpose of resolving the dispute between the employee and the employing office.

(b) MEDIATION PERIOD.—The mediation period shall be 30 days beginning on the date the request for mediation is received and may be extended for an additional 30 days at the discretion of the Office. The Office shall notify the employee and the head of the employing office when the mediation period has ended.

SEC. 307. STEP III: FORMAL COMPLAINT AND HEARING.

(a) FORMAL COMPLAINT AND REQUEST FOR HEARING.—Not later than 30 days after receipt by the employee of notice from the Office of the end of the mediation period, the Senate employee may file a formal complaint with the Office. No complaint may be filed unless the employee has made a timely request for counseling and has completed the procedures set forth in sections 305 and 306.

(b) HEARING BOARD.—A board of 3 independent hearing officers (referred to in this title as "hearing board"), who are not Senators or officers or employees of the Senate, chosen by the Director (one of whom shall be designated by the Director as the presiding hearing officer) shall be assigned to consider each complaint filed under this section. The Director shall appoint hearing officers after considering any candidates who are recommended to the Director by the Federal Mediation and

Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters. A hearing board shall act by majority vote.

(c) DISMISSAL OF FRIVOLOUS CLAIMS.—Prior to a hearing under subsection (d), a hearing board may dismiss any claim that it finds to be frivolous.

(d) HEARING.— A hearing shall be conducted—

(1) in closed session on the record by a hearing board;

(2) no later than 30 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 60 days the time for conducting a hearing; and

(3) except as specifically provided in this title and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code.

(e) DISCOVERY.—Reasonable prehearing discovery may be permitted at the discretion of the hearing board.

(f) SUBPOENA.—

(1) AUTHORIZATION.—A hearing board may authorize subpoenas, which shall be issued by the presiding hearing officer on behalf of the hearing board, for the attendance of witnesses at proceedings of the hearing board and for the production of correspondence, books, papers, documents, and other records.

(2) OBJECTIONS.—If a witness refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with the proceedings of a hearing board, the hearing board shall rule on the objection. At the request of the witness, the employee, or employing office, or on its own initiative, the hearing board may refer the objection to the Select Committee on Ethics for a ruling.

(3) ENFORCEMENT.—The Select Committee on Ethics may make to the Senate any recommendations by report or resolution, including recommendations for criminal or civil enforcement by or on behalf of the Office, which the Select

Committee on Ethics may consider appropriate with respect to—

(A) the failure or refusal of any person to appear in proceedings under this or to produce records in obedience to a subpoena or order of the hearing board; or

(B) the failure or refusal of any person to answer questions during his or her appearance as a witness in a proceeding under this section.

For purposes of section 1365 of title 28, United States Code, the Office shall be deemed to be a committee of the Senate.

(g) DECISION.—The hearing board shall issue a written decision as expeditiously as possible, but in no case more than 45 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the employee and the employing office. The decision shall state the issues raised by the complaint, describe the evidence in the record, and contain a determination as to whether a violation has occurred.

(h) REMEDIES.—If the hearing board determines that a violation has occurred, it shall order such remedies as would be appropriate if awarded under section 706(g) and (k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g) and (k)), and may also order the award of such compensatory damages as would be appropriate if awarded under section 1977 and section 1977A (a) and (b)(2) of the Revised Statutes (42 U.S.C. 1981 and 1981A (a) and (b)(2)). In the case of a determination that a violation based on age has occurred, the hearing board shall order such remedies as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)). Any order requiring the payment of money must be approved by a Senate resolution reported by the Committee on Rules and Administration. The hearing board shall have no authority to award punitive damages.

(i) PRECEDENT AND INTERPRETATIONS.—Hearing boards shall be guided by judicial decisions under statutes referred to in section 302 and subsection (h) of this section, as well as the precedents developed by the Select Committee on Ethics under section 308, and other Senate precedents.

SEC. 308. REVIEW BY THE SELECT COMMITTEE ON ETHICS.

(a) IN GENERAL.—An employee or the head of an employing office may request that the Select Committee on Ethics (referred to in this section as the "Committee"), or such other entity as the Senate may designate, review a decision under section 307, including any decision following a remand under subsection (c), by filing a request for review with the Office not later than 10 days after the receipt of the decision of a hearing board. The Office, at the discretion of the Director, on its own initiative and for good cause, may file a request for review by the Committee of a decision of a hearing board not later than 5 days after the time for the employee or employing office to file a request for review has expired. The Office shall transmit a copy of any request for review to the Committee and notify the interested parties of the filing of the request for review.

(b) REVIEW.—Review under this section shall be based on the record of the hearing board. The Committee shall adopt and publish in the Congressional Record procedures for requests for review under this section.

(c) REMAND.—Within the time for a decision under subsection (d), the Committee may remand a decision no more than one time to the hearing board for the purpose of supplementing the record or for further consideration.

(d) FINAL DECISION.—

(1) HEARING BOARD.—If no timely request for review is filed under subsection (a), the Office shall enter as a final decision, the decision of the hearing board.

(2) SELECT COMMITTEE ON ETHICS.—

(A) If the Committee does not remand under subsection (c), it shall transmit a written final decision to the Office for entry in the records of the Office. The Committee shall transmit the decision not later than 60 calendar days during which the Senate is in session after the filing of a request for review under subsection (a). The Committee may extend for 15 calendar days during which the Senate is in session the period for transmission to the Office of a final decision.

(B) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, unless a majority of the Committee votes to reverse or remand the decision of the hearing board within the time for transmission to the Office of a final decision.

(C) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, if the Committee, in its discretion, decides not to review, pursuant to a request for review under subsection (a), a decision of the hearing board, and notifies the interested parties of such decision.

(3) ENTRY OF A FINAL DECISION.—The entry of a final decision in the records of the Office shall constitute a final decision for purposes of judicial review under section 309.

(e) STATEMENT OF REASONS.—Any decision of the Committee under subsection (c) or subsection (d)(2)(A) shall contain a written statement of the reasons for the Committee's decision.

SEC. 309. JUDICIAL REVIEW.

(a) IN GENERAL.—Any Senate employee aggrieved by a final decision under section 308(d), or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 308(d)(2)(B), may petition for review by the United States Court of Appeals for the Federal Circuit.

(b) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that—

(1) with respect to section 2344 of title 28, United States Code, service of the petition shall be on the Senate Legal Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, United States Code, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 308(d);

(4) the Office shall be an "agency" as that term is used in chapter 158 of title 28, United States Code; and

(5) the Office shall be the respondent in any proceeding under this section.

(c) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision if it is determined that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. The record on review shall include the record before the hearing board, the decision of the hearing board, and the decision, if any, of the Select Committee on Ethics.

(d) ATTORNEY'S FEES.—If an employee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C.2000e-5k)).

SEC. 310. RESOLUTION OF COMPLAINT.

If, after a formal complaint is filed under section 307, the employee and the head of the employing office resolve the issues involved, the employee may dismiss the complaint or the parties may enter into a written agreement, subject to the approval of the Director.

SEC. 311. COSTS OF ATTENDING HEARINGS.

Subject to the approval of the Director, an employee with respect to whom a hearing is held under this title may be reimbursed for actual and reasonable costs of attending proceedings under sections 307 and 308, consistent with Senate travel regulations. Senate Resolution 259, agreed to August 5, 1987 (100th Congress, 1st Session), shall apply to witnesses appearing in proceedings before a hearing board.

SEC. 312. PROHIBITION OF INTIMIDATION.

Any intimidation of, or reprisal against, any employee by any Member, officer, or employee of the Senate, or by the Architect of the Capitol, or anyone employed by the Architect of the Capitol, as the case may be, because of the exercise of a right under this title constitutes an unlawful employment practice, which may be remedied in the same manner under this title as is a violation.

SEC. 313. CONFIDENTIALITY.

(a) COUNSELING.—All counseling shall be strictly confidential except that the Office and the employee may agree to notify the head of the employing office of the allegations.

(b) MEDIATION.—All mediation shall be strictly confidential.

(c) HEARINGS.—Except as provided in subsection (d), the hearings, deliberations, and decisions of the hearing board and the Select Committee on Ethics shall be confidential.

(d) FINAL DECISION OF SELECT COMMITTEE ON ETHICS.—The final decision of the Select Committee on Ethics under section 308 shall be made public if the decision is in favor of the complaining Senate employee or if the decision reverses a decision of the hearing board which had been in favor of the employee. The Select Committee on Ethics may decide to release any other decision at its discretion. In the absence of a proceeding under section 308, a decision of the hearing board that is favorable to the employee shall be made public.

(e) RELEASE OF RECORDS FOR JUDICIAL REVIEW.—The records and decisions of hearing boards, and the decisions of the Select Committee on Ethics, may be made public if required for the purpose of judicial review under section 309.

SEC. 314. EXERCISE OF RULEMAKING POWER.

The provisions of this title, except for sections 309, 320, 321, and 322, are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. Notwithstanding any other provision of law, except as provided in section 309, enforcement and adjudication with respect to the discriminatory practices prohibited by section 302, and arising out of Senate employment, shall be within the exclusive jurisdiction of the United States Senate.

SEC. 315. TECHNICAL AND CONFORMING AMENDMENTS.

Section 509 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) through (5);

(B) by redesignating paragraphs (6) and (7) as paragraphs (2) and (3), respectively; and

(C) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by striking "(2) and (6)(A)" and inserting "(2)(A)", as redesignated by subparagraph (B) of this paragraph; and

(ii) by striking "(3), (4), (5), (6)(B), and (6)(C)" and inserting "(2)"; and

(2) in subsection (c)(2), by inserting ", except for the employees who are defined as Senate employees, in section 301(c)(1) of the Civil Rights Act of 1991" after "shall apply exclusively".

SEC. 316. POLITICAL AFFILIATION AND PLACE OF RESIDENCE.

(a) IN GENERAL.—It shall not be a violation with respect to an employee described in subsection (b) to consider the—

(1) party affiliation;

(2) domicile; or

(3) political compatibility with the employing office, of such an employee with respect to employment decisions.

(b) DEFINITION.—For purposes of this section, the term "employee" means—

(1) an employee on the staff of the Senate leadership;

(2) an employee on the staff of a committee or subcommittee;

(3) an employee on the staff of a Member of the Senate;

(4) an officer or employee of the Senate elected by the Senate or appointed by a Member, other than those described in paragraphs (1) through (3); or

(5) an applicant for a position that is to be occupied by an individual described in paragraphs (1) through (4).

SEC. 317. OTHER REVIEW.

No Senate employee may commence a judicial proceeding to redress discriminatory practices prohibited under section 302 of this title, except as provided in this title.

SEC. 318. OTHER INSTRUMENTALITIES OF THE CONGRESS.

It is the sense of the Senate that legislation should be enacted to provide the same or comparable rights and remedies as are provided under this title to employees of instrumentalities of the Congress not provided with such rights and remedies.

SEC. 319. RULE XLII OF THE STANDING RULES OF THE SENATE.

(a) REAFFIRMATION.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

"No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".

(b) AUTHORITY TO DISCIPLINE.—Notwithstanding any provision of this title, including any provision authorizing orders for remedies to Senate employees to redress employment discrimination, the Select Committee on Ethics shall retain full power, in accordance with its authority under Senate Resolution 338, 88th Congress, as amended, with respect to disciplinary action against a Member, officer, or employee of the Senate for a violation of Rule XLII.

SEC. 320. COVERAGE OF PRESIDENTIAL APPOINTEES.

(a) IN GENERAL.—

(1) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of Presidential appointees.

(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any Presidential appointee may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, or such other entity as is designated by the President by Executive Order, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall

determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

(3) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any party aggrieved by a final order under paragraph (2) may petition for review by the United States Court of Appeals for the Federal Circuit.

(B) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that the Equal Employment Opportunity Commission or such other entity as the President may designate under paragraph (2) shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(C) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under paragraph (2) if it is determined that the order was—

(i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(ii) not made consistent with required procedures; or

(iii) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(D) ATTORNEY'S FEES.—If the presidential appointee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(b) PREISDENTIAL APPOINTEE.—For purposes of this section, the term "Presidential appointee" means any officer or employee, or an applicant seeking to become an officer or

employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 302 but does not include any individual—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or

(3) who is a member of the uniformed services.

SEC. 321. COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES.

(a) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) ENFORCEMENT BY ADMINISTRATIVE ACTION.—

(1) IN GENERAL.—Any individual referred to in subsection (a) may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) REFERRAL TO STATE AND LOCAL AUTHORITIES.—

(A) APPLICATION.—Section 706(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5d)) shall apply with respect to any proceeding under this section.

(B) DEFINITION.—For purposes of the application described in subparagraph (A), the term "any charge filed by a member of the Commission alleging an unlawful employment practice" means a complaint filed under this section.

(c) JUDICIAL REVIEW.—Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28, United States Code. For the purpose of this review, the Equal Employment Opportunity Commission shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(d) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) ATTORNEY'S FEES.—If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subjection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C.2000e-5k)).

SEC. 322. SEVERABILITY.

Notwithstanding section 401 of this Act, if any provision of section 309 or 320(a)(3) is invalidated, both sections 309 and 320(a)(3) shall have no force and effect.

SEC. 323. PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made on his or her behalf out of such account for a violation committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

SEC. 324. REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this section are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

SEC. 325. INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) INTERVENTION.—Because of the constitutional issues that may be raised by section 309 and section 320, any Member of the Senate may intervene as a matter of right in any proceeding under section 309 for the sole purpose of determining the constitutionality of such section.

(b) THRESHOLD MATTER.—In any proceeding under section 309 or section 320, the United States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) APPEAL.—

(1) IN GENERAL.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the

United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 309 or 320.

(2) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

TITLE IV—GENERAL PROVISIONS

SEC. 401. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 402. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

(b) CERTAIN DISPARATE IMPACT CASES.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

TITLE V—CIVIL WAR SITES ADVISORY COMMISSION

SEC. 501. CIVIL WAR SITES ADVISORY COMMISSION.

Section 1205 of Public Law 101-628 is amended in subsection (a) by—

(1) striking "Three" in paragraph (4) and inserting "Four" in lieu thereof; and

(2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.

Approved November 21, 1991.

APPENDIX E

DECISIONS ON THE APPLICABILITY OF THE CIVIL RIGHTS ACT OF 1991 TO PENDING CASES

DECISIONS APPLYING THE ACT TO PENDING CASES[1]

Ninth Circuit—Court of Appeals

Davis v. City and County of San Francisco, No. 91-15113, 1992 U.S. App. LEXIS 24836 (9th Cir. Oct. 6, 1992) (Fletcher, J.) (the Act applies to pending cases).

First Circuit—District Courts

Marrero-Rivera v. Dept. of Justice of the Commonwealth of Puerto Rico, No. 92-1172, 1992 WL 200435 (D.P.R. July 23, 1992) (Fuste, J.) (§ 102 of the Act applies to cases involving pre-Act conduct filed after the effective date of the Act).

Second Circuit—District Courts

Croce v. VIP Real Estate, Inc., 786 F. Supp. 1141 (E.D.N.Y. Mar. 21, 1992) (Spatt, J.) (§ 102 of the Act applies to pending cases).

Jackson v. Bankers Trust Co., No. 88 CIV. 4786 (JSM), 1992 U.S. Dist. LEXIS 6290 (S.D.N.Y. May 4, 1992) (Martin, J.) (§§ 102, 113 of the Act apply to pending cases).

Gardner v. MCI Telecommunications Corp., 792 F. Supp. 377 (S.D.N.Y. June 11, 1992) (Sprizzo, J.) (§ 102(c) of the Act applies to pending cases).

Wisdom v. Intrepid Sea-Air Museum, No. 91 CIV. 4439 (RPP), 1992 U.S. Dist. LEXIS 9424 (S.D.N.Y. June 26, 1992) (Patterson, J.) (§ 102 of the Act applies to pending cases).

Postema v. National League of Professional Baseball Clubs, No. 91 CIV. 8507 (RPP), 1992 WL 196656 (S.D.N.Y. July 17, 1992) (Patterson, J.) (§ 102 of the Act applies to pending cases).

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[1] The decisions listed in this appendix are all those decisions that our research has discovered to date. The list, however, is by no means exhaustive.

Bridges v. Eastman Kodak Co., No. 91 CIV. 7985 (RLC), 1992 U.S. Dist. LEXIS 13083 (S.D.N.Y. Sept. 1, 1992) (Carter, J.) (§ 102 of the Act applies to pending cases).

Third Circuit—District Courts

Thakkar v. Provident Nat'l Bank, No. 90-3907, 1991 U.S. Dist. LEXIS 18753 (E.D. Pa. Dec. 17, 1991) (Waldman, J.) (the Act applies to pending cases).

Wittman v. New England Mutual Life Ins. Co., No. 90-1688 (W.D. Pa. Feb. 10, 1992) (Diamond, J.) (the Act applies to pending cases).

Sample v. Keystone Carbon Co., 786 F. Supp. 527 (W.D. Pa. Mar. 4, 1992) (Cahill, J.) (§§ 102, 107 of the Act apply to pending cases).

Klaus v. Duquesne Light Co., No. 90-1149, 1992 WL 189390 (W.D. Pa. Mar. 11, 1992) (Lancaster, J.) (§§ 101, 102 of the Act apply to pending cases).

Greenwood v. M.P.W. Stone, No. 91-1795, 1992 WL 163601 (W.D. Pa. Mar. 23, 1992) (Ziegler, J.) (§ 102 of the Act applies to pending cases).

Savko v. Port Auth. of Allegheny County, No. 87-2390, 1992 U.S. Dist. LEXIS 9201 (W.D. Pa. May 22, 1992) (Lewis, J.) (§ 102 of the Act applies to pending cases).

Tyler v. Commonwealth of Pennsylvania, Dep't. of Revenue, 793 F. Supp. 98 (M.D. Pa. June 4, 1992) (McClure, J.) (§ 102 of the Act applies to pending cases).

Kodenkandeth v. American Tel. & Tel. Co., No. 91-940 (W.D. Pa. July 2, 1992) (Bloch, J.) (§ 101 of the Act does not apply to pending cases).

Fourth Circuit—District Courts

Leach v. Northern Telecom, Inc., 790 F. Supp. 572 (E.D.N.C. Jan. 17, 1992) (Britt, J.) (the Act applies to pending cases).

Holmes v. Carolina Power & Light Co., No. 91-508-CIV-S-F, 1992 WL 82485 (E.D.N.C. Feb. 13, 1992) (McCotter, J.) (§ 102(c) of the Act applies to pending cases).

Jaekel v. Equifax Mktg. Decision Sys., No. 92-607-A, 1992 U.S. Dist. LEXIS 9489 (E.D. Va. June 26, 1992) (Ellis, J.) (§ 102 of the Act applies to pending cases).

Fifth Circuit—District Courts

LaCour v. Harris, No. H-89-1532, 1991 U.S. Dist. LEXIS 19223 (S.D. Tex. Dec. 6, 1991) (Hoyt, J.) (§ 102(c) of the Act applies to pending cases), *aff'd without opinion*, 1992 U.S. App. LEXIS 27350 (5th Cir. Sept. 25, 1992).

Equal Employment Opportunity Comm'n v. Fred's Stores of Mississippi, Inc., No. GC90-294-D-O, 1992 U.S. Dist. LEXIS 8260 (N.D. Miss. Mar. 20, 1992) (Orlansky, J.) (§ 102 of the Act applies to pending cases).

Tarver v. Functional Living, Inc., No. A-92-CA-052, 1992 U.S. Dist. LEXIS 8518 (W.D. Tex. June 8, 1992) (Nowlin, J.) (§ 102 of the Act applies to pending cases).

McConnell v. Thomson Newspapers, Inc., No. 2:92CV22, 1992 U.S. Dist. LEXIS 12133 (E.D. Tex. Aug. 11, 1992) (Justice, J.) (§ 115 of the Act applies to cases invovling pre-Act conduct filed after the effective date of the Act).

Sixth Circuit—District Courts

Andrade v. Crawford and Co., 792 F. Supp. 543 (N.D. Ohio May 5, 1992) (Aldrich, J.) (§ 101 of the Act applies to pending cases).

Keys v. U.S. Welding Fabricating and Mfg., Inc., No. 1:91CV0113, 1992 U.S. Dist. LEXIS 13197 (N.D. Ohio Aug. 26, 1992) (Aldrich, J.) (§ 101 of the Act applies to pending cases).

Seventh Circuit—District Courts

Mojica v. Gannett Co., Inc., 779 F. Supp. 94 (N.D. Ill. Nov. 27, 1991) (Hart, J.) (§ 102 of the Act applies to pending cases).

Equal Employment Opportunity Comm'n v. Elgin Teachers Ass'n, No. 86-C-6775, 1991 U.S. Dist. LEXIS 18527 (N.D. Ill. Dec. 12, 1991) (Alesia, J.) (§ 115 of the Act applies to pending cases).

Cary v. Chicago Housing Auth., No. 87-C-6998, 1991 U.S. Dist. LEXIS 18543 (N.D. Ill. Dec. 13, 1991) (Nordberg, J.) (§ 113 of the Act does apply to pending cases).

Saltarikos v. Charter Mfg. Co., 782 F. Supp. 420 (E.D. Wis. Jan. 8, 1992) (Evans, J.) (§ 101 of the Act applies to pending cases).

Guess v. City of Portage, No. H90-276, 1992 WL 8722 (N.D. Ind. Jan. 14, 1992) (Rodovich, J.) (§ 102 of the Act applies to pending cases).

Bristow v. Drake St., Inc., No. 87-C-4412, 1992 U.S. Dist. LEXIS 499 (N.D. Ill. Jan. 17, 1992) (Zagel, J.) (§§ 102, 107 of the Act apply to pending cases).

Graham v. Bodine Elec. Co., 782 F. Supp. 74 (N.D. Ill. Jan. 23, 1992) (Leinenweber, J.) (the Act applies to pending cases).

Hrabak v. Marquip, Inc., No. 91-C-9442, 1992 WL 189392 (W.D. Wis. Feb. 11, 1992) (Shabaz, J.) (§ 102 of the Act applies to pending cases).

Gillespie v. Norwest Corp., Nos. 85-C-1318, 85-C-1393, 1992 U.S. Dist. LEXIS 5230 (E.D. Wis. Feb. 14, 1992) (Stadtmueller, J.) (the Act applies to pending cases).

Poston v. Reliable Drugstores, Inc., 783 F. Supp. 1166 (S.D. Ind. Feb. 19, 1992) (Dillin, J.) (§ 101 of the Act applies to pending cases).

Aldana v. Raphael Contractors, Inc., 785 F. Supp. 1328 (N.D. Ind. Feb. 26, 1992) (Lozano, J.) (§ 102 of the Act applies to pending cases).

Boyer v. Kimberly Serv., Inc., No. 91-00379, 1992 U.S. Dist. LEXIS 8612 (S.D. Ill. Feb. 28, 1992) (Stiehl, J.) (§ 102 of the Act applies to pending cases).

Manning v. Moore Business Forms, No. 91-C-707, 1992 WL 160604 (W.D. Wis. Mar. 31, 1992) (Shabaz, J.) (§ 102 of the Act applies to pending cases).

Werntz v. Civil City of South Bend, Indiana, No. 591-305M (N.D. Ind. Apr. 7, 1992) (Miller, J.) (§ 102 of the Act applies to pending cases).

Lute v. Consolidated Freightways, Inc., 789 F. Supp. 964 (N.D. Ind. Apr. 27, 1992) (Miller, J.) (§ 102 of the Act applies to pending cases).

Emery v. Chicago Transit Auth., No. 91-C-7091, 1992 U.S. Dist. LEXIS 7222 (N.D. Ill. May 13, 1992) (Kocoras, J.) (§ 102 of the Act applies to pending cases).

Brown v. Amoco Oil Co., 793 F. Supp. 846 (N.D. Ind. May 15, 1992) (Moody, J.) (§ 102 of the Act applies to pending cases).

Lofton v. Brown & Williamson Tobacco Corp., No. 90-C-5796, 1992 U.S. Dist. LEXIS 7517 (N.D. Ill. May 28, 1992) (Guzman, J.) (§ 102 of the Act applies to pending cases).

Carpenter v. Ford Motor Co., No. 90-C-5822, 1992 U.S. Dist. LEXIS 8165 (N.D. Ill. June 9, 1992) (Kocoras, J.)(§ 102 of the Act applies to pending cases).

Basilick v. Cole, No. 91-C-5156, 1992 WL 166950 (N.D. Ill. July 8, 1992) (Moran, J.) (§ 102 of the Act applies to pending cases).

Eighth Circuit—District Courts

Davis v. Tri-State Mack Distributions, Inc., No. LR-C-89-912, 1991 U.S. Dist. LEXIS 19380 (E.D. Ark. Dec. 16, 1991) (Roy, J.) (§ 113 of the Act does apply to pending cases).

Griddine v. Dillard Dep't Stores, Inc., No. 89-0333-CV-W-6, 1992 U.S. Dist. LEXIS 3586 (W.D. Mo. Mar. 16, 1992) (Sachs, J.) (§ 113 of the Act does apply to pending cases).

Sudtelgle v. Sessions, 789 F. Supp. 312 (W.D. Mo. Apr. 21, 1992) (Sachs, J.) (§ 113 of the Act does apply to pending cases).

Ninth Circuit—District Courts

Stender v. Lucky Stores, Inc., 780 F. Supp. 1302 (N.D. Cal. Jan. 7, 1992) (Patel, J.) (the Act applies to pending cases).

Sanders v. Culinary Workers Union Local No. 226, 783 F. Supp. 531 (D. Nev. Feb. 11, 1992) (Pro, J.) (the Act applies to pending cases).

United States v. Department of Mental Health, 785 F. Supp. 846 (E.D. Cal. Mar. 2, 1992) (Beck, J.) (§ 102 of the Act applies to pending cases).

Fernando v. Hotel Nikko Saipan, Inc., No. 91-0013, 1992 U.S. Dist. LEXIS 10228 (D. N. Mariana I. Mar. 7, 1992) (Munson, J.) (the Act applies to pending cases).

Lee v. Sullivan, 787 F. Supp. 921 (N.D. Cal. Mar. 26, 1992) (Brazil, J.) (§ 102 of the Act applies to pending cases).

Bierdeman v. Shearson Lehman Hutton, Inc., No. C-89-4473, 1992 U.S. Dist. LEXIS 13366 (N.D. Cal. May 28, 1992) (Peckham, J.) (§§ 101, 102 of the Act apply to pending cases), *rev'd on other grounds*, 963 F.2d 378, 1992 U.S. App. LEXIS 13271 (9th Cir.), *cert. denied*, 61 U.S.L.W. 3284 (1992).

Ashburne v. Stonepine Resort Co., Inc., No. C-91-20191-WAI (N.D. Cal. June 1, 1992) (Ingram, J.) (§ 101 of the Act applies to pending cases).

Coulter v. Newmont Gold Co., No. CV-N-91-508, 1992 WL 231011 (D. Nev. June 4, 1992) (Reed, J.) (§ 102 of the Act applies to pending cases).

Kent v. Howard, No. CIV. 92-280-R(M), 1992 WL 207653 (S.D. Cal. Aug. 24, 1992) (Rhoades, J.) (§ 102 of the Act applies to pending cases).

Tenth Circuit—District Courts

Great Am. Tool and Mfg. Co. v. Adolph Coors Co., Inc., 780 F.Supp. 1354 (D. Colo. Jan. 16, 1992) (Baback, J.) (§ 101 of the Act applies to cases involving pre-Act conduct filed after the effective date of the Act).

Pflueger v. Effective Secretarial Serv., Inc., No. CIV-91-182-C (W.D. Okla. Mar. 6, 1992) (Cauthron, J.) (the Act applies to pending cases).

Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42 of Stephens County, Oklahoma, No. CIV-91-808-A (N.D. Okla. Feb. 12, 1992) (Alley, J.) (the Act applies to pending cases).

Smith v. Colorado Interstate Gas Co., 794 F. Supp. 1035 (D. Colo. May 22, 1992) (Babcock, J.) (§ 113 of the Act does apply to pending cases).

Eleventh Circuit—District Courts

King v. Shelby Medical Ctr., 779 F. Supp. 157 (N.D. Ala. Dec. 18, 1991) (Acker, J.) (§§ 101, 102 of the Act apply to pending cases).

Goldsmith v. City of Atmore, 782 F. Supp. 106 (S.D. Ala. Jan. 15, 1992) (Butler, J.) (§§ 101, 102 of the Act apply to pending cases).

Long v. Carr, 784 F. Supp. 887 (N.D. Ga. Jan. 31, 1992) (Freeman, J.) (§ 102 of the Act applies to pending cases).

Joyner v. Monier Roof Tile, Inc., 784 F. Supp. 872 (S.D. Fla. Feb. 4, 1992) (Paine, J.) (§§ 102, 107 of the Act apply to pending cases).

Watkins v. Bessemer State Technical College, 782 F. Supp. 581 (N.D. Ala. Feb. 6, 1992) (Acker, J.) (§§ 101, 102 of the Act apply to pending cases).

Carmichael v. Fowler, No. 1:88-CV-969, 1992 WL 120353 (N.D. Ga. Mar. 11, 1992) (Ward, J.) (§ 102 of the Act applies to pending cases).

Martin v. Federal Express Corp., No. 4:90-CV-88-HCM (N.D. Ga. Mar. 27, 1992) (Murphy, J.) (§ 102 of the Act applies to pending cases).

Gilbert v. Milliken & Co., 794 F. Supp. 376 (N.D. Ga. Mar. 30, 1992) (Tidwell, J.) (§ 102 of the Act applies to pending cases).

Sussman v. Saxon, No. 91-776-CIV-7-17C, 1992 U.S. Dist. LEXIS 7755 (M.D. Fla. May 29, 1992) (Kovachevich, J.) (§ 102 of the Act applies to pending cases).

Assily v. Tampa Gen. Hosp., 791 F. Supp. 862 (M.D. Fla. May 29, 1992) (Kovachevich, J.) (§ 102 of the Act applies to pending cases).

Desai v. Siemens Medical Systems, Inc., 792 F. Supp. 1275 (M.D. Fla. May 29, 1992) (Kovachevich, J.) (§ 102 of the Act applies to pending cases).

Langston v. Daniels, Micheals & Assoc., No. CV 91-P-2063-5, 1992 WL 198414 (N.D. Ala. June 4, 1992) (Pointer, J.) (§ 102 of the Act applies to pending cases).

D.C. Circuit—District Courts

Robinson v. Davis Memorial Goodwill Indus., 790 F. Supp. 325 (D.D.C. Apr. 21, 1992) (Sporkin, J.) (§ 102 of the Act applies to pending cases).

DECISIONS NOT APPLYING THE ACT TO PENDING CASES

Fifth Circuit—Court of Appeals

Johnson v. Uncle Ben's, Inc., 965 F.2d 1363 (5th Cir. July 1, 1992) (Higginbottam, J.) (§ 101 of the Act does not apply to pending cases).

Landgraf v. USI Film Products, 968 F.2d 427 (5th Cir. July 30, 1992) (Higginbottam, J.) (§ 102 of the Act does not apply to pending cases).

Rowe v. Sullivan, 967 F.2d 186 (5th Cir. Aug. 5, 1992) (Garza, J.) (§§ 101, 114 do not apply to pending cases).

Wilson v. Belmont Homes, Inc., 970 F.2d 53 (5th Cir. Aug. 28, 1992) (Smith, J.) (§ 102 of the Act does not apply to pending cases).

Valdez v. San Antonio Chamber of Commerce, Nos. 91-5713, 91-5820, 1992 WL 236161 (5th Cir. Sept. 25, 1992) (DeMoss, J.) (§§ 101, 102 of the Act do not apply to pending cases).

Wilson v. UT Health Ctr., No. 91-4618, 1992 WL 229549 (5th Cir. Oct. 6, 1992) (Reavley, J.) (§ 102 of the Act does not apply to pending cases).

Sixth Circuit—Court of Appeals

Vogel v. City of Cincinnati, 959 F.2d 594 (6th Cir. Mar. 13, 1992) (Timbers, J.) (the Act does not apply to pending cases where it affects the substantive rights and liabilities of the parties), *cert. denied*, 60 U.S.L.W. 3881 (Oct. 5, 1992).

Brownlee v. Chrysler Motors Corp., No. 91-1587, 1992 U.S. App. LEXIS 14669 (6th Cir. June 16, 1992) (the Act does not apply to pending cases).

Hines v. Vanderbilt Univ. Medical Ctr., No. 91-5418, 1992 U.S. App. LEXIS 14689 (6th Cir. June 17, 1992) (the Act does not apply to pending cases).

Douthit v. Keebler Co., 968 F.2d 1214 (6th Cir. June 24, 1992) (text in WESTLAW) (the Act does not apply to pending cases).

Paglio v. Chagrin Valley Hunt Club Corp., 966 F.2d 1453 (6th Cir. June 25, 1992) (text in WESTLAW) (the Act does not apply to pending cases).

Harvis v. Roadway Express, Inc., 973 F.2d 490 (6th Cir. Aug. 24, 1992) (Boggs, J.) (§ 101 of the Act does not apply to pending cases).

Kuhn v. Island Creek Coal Co., No. 91-6325, 1992 WL 207942 (6th Cir. Aug. 27, 1992) (*per curiam*) (text in WESTLAW) (the Act does not apply to pending cases).

Roland v. Johnson, No. 91-1460, 1992 WL 214441 (6th Cir. Sept. 4, 1992) (*per curiam*) (text in WESTLAW) (§ 113 does not apply to pending cases).

Holt v. Michigan Dep't of Corrections, No. 91-2034, 1992 WL 217067 (6th Cir. Sept. 11, 1992) (Merritt, J.) (the Act does not apply to pending cases).

Seventh Circuit—Court of Appeals

Mozee v. American Commercial Marine Serv. Co., 963 F.2d 929 (7th Cir. May 7, 1992) (Wood, J.) (§§ 101, 102, 104, 105 not applicable to case pending on appeal), *cert. denied*, 61 U.S.L.W. 3150 (Oct. 5, 1992).

Malhotra v. Cotter & Co., No. 90-3862, 1992 U.S. App. LEXIS 13007 (7th Cir. May 28, 1992) (§ 101 of the Act does not apply to pending cases).

Luddington v. Indiana Bell Tel. Co., 966 F.2d 225 (7th Cir. June 15, 1992) (Posner, J.) (§ 101 of the Act does not apply to pending cases).

Rush v. McDonald's Corp., 966 F.2d 1104 (7th Cir. June 29, 1992) (Ripple, J.) (§ 101 of the Act does not apply to pending cases).

Artis v. Hitachi Zosen Clearing, Inc., 967 F.2d 1132 (7th Cir. July 9, 1992) (Cudahy, J.) (§ 101 of the Act does not apply to pending cases).

Taylor v. Western and Southern Life Ins. Co., 966 F.2d 1188 (7th Cir. July 13, 1992) (Ripple, J.) (§ 101 of the Act does not apply to pending cases).

Banas v. American Airlines, 969 F.2d 477 (7th Cir. July 29, 1992) (Cummings, J.) (§ 112 of the Act does not apply to pending cases).

Eighth Circuit—Court of Appeals

Fray v. Omaha World Herald Co., 960 F.2d 1370 (8th Cir. Apr. 3, 1992) (Loken, J.) (§ 101 of the Act does not apply to pending cases).

Valdez v. Mercy Hospital, 961 F.2d 1401 (8th Cir. Apr. 27, 1992) (Bowman, J.) (§ 101 of the Act does not apply to pending cases).

Huey v. Sullivan, 971 F.2d 1362 (8th Cir. July 30, 1992) (Magill, J.) (§§ 113, 114 of the Act do not apply to pending cases).

Parton v. GTE North, Inc., 971 F.2d 150 (8th Cir. July 31, 1992) (Bowman, J.) (§ 101 of the Act does not apply to pending cases).

Eleventh Circuit—Court of Appeals

Baynes v. AT&T, Inc. and Gasaway, No. 91-8488, 1992 WL 296716 (11th Cir. Oct. 20, 1992) (*per curiam*) (§§ 101, 102 of the Act do not apply to pending cases).

D.C. Circuit—Court of Appeals

Gersman v. Group Health Ass'n, Inc., No. 89-5482, 1992 WL 220163 (D.C. Cir. Sept. 15, 1992) (Sentelle, J.) (§ 101 of the Act does not apply to pending cases).

First Circuit—District Courts

Virapen v. Eli Lilly, S.A., 793 F. Supp. 36 (D. Puerto Rico June 25, 1992) (Perez-Gimenez, J.) (the Act does not apply to pending cases).

Second Circuit—District Courts

Sorlucco v. New York City Police Dep't, 780 F. Supp. 202 (N.D.N.Y. Jan. 7, 1992) (McKassey, J.) (§ 102 of the Act does

not apply to pending cases), *rev'd on other grounds*, 971 F.2d 864 (July 28, 1992).

McLaughlin v. State of New York, Governor's Office of Employee Relations, 784 F. Supp. 961 (N.D.N.Y. Mar. 5, 1992) (McCurn, J.) (§ 102 of the Act does not apply to pending cases).

Reynolds v. Frank, 786 F. Supp. 168 (D. Conn. Mar. 18, 1992) (Dorsey, J.) (§ 102 of the Act does not apply to pending cases).

Sava v. General Elec. Co., 789 F. Supp. 78 (D. Conn. Apr. 10, 1992) (Zampano, J.) (§ 102 of the Act does not apply to pending cases).

Smith v. Petra Cablevision Corp., 793 F. Supp. 417 (E.D.N.Y. May 20, 1992) (Amon, J.) (the Act does not apply to pending cases).

Boss v. Board of Educ., Union Free Sch. Dist. #6, No. CV 92-0399, 1992 WL 160398 (E.D.N.Y. July 6, 1992) (§§ 101, 102 of the Act do not apply to pending cases).

Kelber v. Forest Electric Corp., No. 90 CIV. 3790 (LJF), 1992 WL 189247 (S.D.N.Y. July 7, 1992) (Freeh, J.) (the Act does not apply to pending cases).

Lippa v. General Motors, 796 F. Supp. 81 (N.D.N.Y. Aug. 12, 1992) (Telesca, J.) (the Act does not apply to pending cases).

Guntur v. Union College, No. 88 CIV. 1080, 1992 U.S. Dist. LEXIS 12499 (N.D.N.Y. Aug. 19, 1992) (McCurn, J.) (§ 102 of the Act does not apply to pending cases).

Jorge v. New York City Police Dep't, No. 91 CIV. 0798 (LJF), 1992 U.S. Dist. LEXIS 13116 (S.D.N.Y. Sept. 1, 1992) (Freeh, J.) (the Act does not apply to pending cases).

McGeary v. Connecticut Mutual Life Ins. Co., Nos. 2:91CV 1007 (PCD), 2:90CV583 (PCD), 2:90CV59(PCD), 1992 WL 202408 (D. Conn. Mar. 26, 1992) (Dorsey, J.) (the Act does not apply to pending cases).

Kemp v. Flygt Corp., 791 F. Supp. 48 (D. Conn. May 20, 1992) (Eginton, J.) (the Act does not apply to pending cases).

Butts v. City of New York, Dep't of Housing Preservation and Dev., No. 91CIV.5325(LJF), 1992 WL 170681 (S.D.N.Y. July 7, 1992) (Freeh, J.) (the Act does not apply to pending cases).

Stout v. International Business Machs. Corp., No. 91 CIV. 4983(GLG), 1992 WL 166846 (S.D.N.Y. July 16, 1992) (Goettel, J.) (§§ 101, 102 of the Act do not apply to pending cases).

Gilmore v. Local 295, Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., No. 91 CIV. 1860 (GLG), 1992 WL 188300 (S.D.N.Y. Aug. 6, 1992) (Goettel, J.) (§§ 101, 102 of the Act do not apply to pending cases).

Davis v. Boykin Management Co., No. 91-CV-359E, 1992 U.S. Dist. LEXIS 15305 (W.D.N.Y. Aug. 27, 1992) (Elfvin, J.) (§ 102 of the Act does not apply to pending cases).

Third Circuit—District Courts

Alexandre v. Amp, Inc., No. 1:CV-90-0868, 1991 WL 322947 (M.D. Pa. Dec. 5, 1991) (Caldwell, J.) (the Act does not apply to pending cases).

Sinnovich v. Port Authority of Allegheny, No. 89-1524, 1991 WL 348046 (W.D. Pa. Dec. 31, 1991) (Standish, J.) (the Act does not apply to pending cases).

Futch v. Stone, 782 F. Supp. 284 (M.D. Pa. Jan. 13, 1992) (McClure, J.) (§ 102 of the Act does not apply to pending cases).

Tyree v. Riley, 783 F. Supp. 877 (D.N.J. Feb. 7, 1992) (Lechner, J.) (§ 102 of the Act does not apply to pending cases).

Kimble v. DPCE, Inc., 784 F. Supp. 250 (E.D. Pa. Feb. 13, 1992) (Kelly, J.) (the Act does not apply to pending cases).

Thomas v. Frank, 791 F. Supp. 470 (D.N.J. Feb. 13, 1992) (Debevoise, J.) (§ 102 of the Act does not apply to pending cases).

Thompson v. Johnson & Johnson Management Info. Ctr., 783 F. Supp. 893 (D.N.J. Feb. 18, 1992) (Fisher, J.) (the Act does not apply to pending cases).

Long v. Hershey Chocolate, USA, No. 1:CV-91-1689, 1992 U.S. Dist. LEXIS 6583 (M.D. Pa. May 1, 1992) (Rambo, J.) (the Act does not apply to pending cases).

Haynes v. Glen Mills Sch., No. 91-6905, 1992 U.S. Dist. LEXIS 6464 (E.D. Pa. May 5, 1992) (Kelly, J.) (the Act does not apply to pending cases).

Crumley v. Delaware State College, No. 92-25, 1992 U.S. Dist. LEXIS 8982 (D. Del. June 11, 1992) (Schwartz, J.) (§§ 102, 113 of the Act do not apply to pending cases).

Konstantopoulos v. Westvaco Corp., No. 90-146, 1992 U.S. Dist. LEXIS 9466 (D. Del. June 19, 1992) (Wright, J.) (§§ 102, 113 of the Act do not apply to pending cases).

Neibauer v. Philadelphia College of Pharmacy and Science, No. 92-CV-1993, 1992 U.S. Dist. LEXIS 9702 (E.D. Pa. June 19, 1992) (Weiner, J.) (§ 102 of the Act does not apply to pending cases).

Thompson v. Prudential Ins. Co. of Am., 795 F. Supp. 1337 (D.N.J. June 23, 1992) (Barry, J.) (the Act does not apply to pending cases).

Aiken v. Bucks Ass'n for Retarded Citizens, Inc., No. Civ. A. 91-2672, 1992 WL 186582 (E.D. Pa. July 14, 1992) (Reed, J.) (§§ 101, 102 of the Act do not apply to pending cases).

Core v. Guest Quarters Hotel/Beacon Hotel Corp., No. 92-2033, 1992 WL 189405 (E.D. Pa. July 30, 1992) (Bartle, J.) (§ 101 of the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Heist v. United States Postal Serv., No. 91-3583, 1992 WL 189394 (E.D. Pa. Aug. 3, 1992) (Troutman, J.) (the Act does not apply to pending cases).

Hayman v. WYXR-FM, No. 91-6444, 1992 WL 210113 (E.D. Pa. Aug. 21, 1992) (Vanartsdalen, J.) (the Act does not apply to pending cases).

Flagg v. Delaware County, No. 90-7136, 1992 U.S. Dist. LEXIS 15139 (E.D. Pa. Sept. 28, 1992) (McGlynn, J.) (§ 101 of the Act does not apply to pending cases).

Fourth Circuit—District Courts

Khandelwal v. Compuadd Corp., 780 F. Supp. 1077 (E.D. Va. Jan. 15, 1992) (Williams, J.) (the Act does not apply to pending cases).

Patterson v. McLean Credit Union, 784 F. Supp. 268 (M.D. N.C. Feb. 18, 1992) (Ward, J.) (the Act does not apply to pending cases).

Percell v. International Business Machs., Inc., 785 F. Supp. 1229 (E.D.N.C. Feb. 28, 1992) (Dupree, J.) (the Act does not apply to pending cases).

Rowsom v. County of Arlington, Virginia, 786 F. Supp. 555 (E.D. Va. Mar. 19, 1992) (Cacheris, J.) (§ 101 of the Act does not apply to pending cases).

McCormick v. Consolidated Coal Co., 786 F. Supp. 563 (N.D. W.Va. Mar. 20, 1992) (Maxwell, J.) (the Act does not apply to pending cases).

Pascual v. Anchor Advanced Prods., Inc., No. CIV-2-91-362 (E.D. Tenn. Apr. 14, 1992) (Hull, J.) (§ 102 of the Act does not apply to pending cases).

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137 (D.S.C. May 8, 1992) (Shedd, J.) (the Act does not apply to pending cases).

Hobbs v. Schneider Nat'l Carriers, Inc., 793 F. Supp. 660 (W.D.N.C. June 12, 1992) (Potter, J.) (the Act does not apply to pending cases).

Boyce v. Fleet Finance Inc., No. 2:92CV170, 1992 WL 191596 (E.D. Va. July 7, 1992) (Clarke, J.) (§ 101 of the Act does not apply to pending cases).

Pagana-Fay v. Washington Suburban Sanitary Comm'n, No. H-90-848, 1992 WL 159904 (D. Md. July 8, 1992) (Harvey, J.) (§ 102 of the Act does not apply to pending cases).

Fifth Circuit—District Courts

Stevens v. Mann, No. H-90-2175, 1992 WL 101764 (S.D. Tex. Jan. 21, 1992) (Harmon, J.) (the Act does not apply to pending cases).

Equal Employment Opportunity Comm'n v. Wal-Mart Stores, Inc., No. LR-C-90-865 (E.D. Ark. Feb. 2, 1992) (Woods, J.) (the Act does not apply to pending cases).

West v. Pelican Management Services, 782 F. Supp. 1132 (M.D. La. Feb. 3, 1992) (Noland, J.) (§ 102 of the Act does not apply to pending cases).

Bricker v. Comedy House, Inc., No. LR-C-90-805 (E.D. Ark. Feb. 7, 1992) (Wright, J.) (the Act does not apply to pending cases).

Hall v. Sears, CA-3-90-1514-J, 1992 U.S. Dist. LEXIS 8910 (N.D. Tex. Feb. 11, 1992) (Robinson, J.) (the Act does not apply to pending cases).

Coleman v. Santa Rosa Health Care Corp., No. SA-91-CA-0811 (W.D. Tex. Mar. 2, 1992) (O'Connor, J.) (the Act does not apply to pending cases).

Coleman-Lusk v. Emergency Networks, Inc., CA-3-91-0971-J, 1992 U.S. Dist. LEXIS 6661 (N.D. Tex. Mar. 30, 1992) (Robinson, J.) (§ 102 of the Act does not apply to pending cases).

Ridley v. American Tel. & Tel., No. 92-0061, 1992 U.S. Dist. LEXIS 7277 (E.D. La. May 20, 1992) (Beev, J.) (the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Koppman v. South Cent. Bell Tel. Co., No. Civ.A.90-4503, 1992 WL 142390 (E.D. La. June 17, 1992) (Clement, J.) (the Act does not apply to pending cases).

Smith v. Garrett, No. 91-3973, 1992 U.S. Dist. LEXIS 9533 (E.D. La. June 19, 1992) (Schwartz, J.) (the Act does not apply to pending cases).

Rice v. Zelaya, No. 91-4594, 1992 WL 165716 (E.D. La. July 8, 1992) (Wynne, J.) (§ 102 of the Act does not apply to pending cases).

McCoy v. Western Atlas Int'l, No. 90-2828, 1992 WL 165733 (E.D. La. July 8, 1992) (Clement, J.) (§ 101 of the Act does not apply to pending cases).

Domengeaux v. Lifetron, Inc., No. 92-2087, 1992 WL 211452 (E.D. La. Aug. 20, 1992) (Livardais, J.) (the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Alexis v. Wooten, No. 90-1485, 1992 WL 210006 (E.D. La. Aug. 21, 1992) (Livardais, J.) (the Act does not apply to pending cases).

McFarland v. South Cent. Bell, Inc., No. 92-755, 1992 WL 245641 (E.D. La. Sept. 15, 1992) (Clement, J.) (the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Johnson v. Gillman North, Inc., No. Civ. A. H-92-41, 1992 WL 274315 (S.D. Tex. Sept. 23, 1992) (Botley, J.) (the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Rogers v. Caps Corp., No. 92-1968, 1992 U.S. Dist. LEXIS 14854 (E.D. La. Sept. 25, 1992) (McNamara, J.) (§ 102 of the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Evans v. Trowbridge, No. 92-0319, 1992 U.S. Dist. LEXIS 15242 (E.D. La. Oct. 5, 1992) (McNamara, J.) (§ 102 of the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Sixth Circuit—District Courts

Johnson v. Rice, No. 2:85-CV-1318, 1992 U.S. Dist. LEXIS 830, (S.D. Ohio Jan. 24, 1992) (King, J.) (§ 102 of the Act does not apply to pending cases).

Taylor v. National Group of Companies, Inc., 790 F. Supp. 142 (N.D. Ohio Mar. 6, 1992) (Carr, J.) (the Act does not apply to pending cases).

Craig v. Ohio Dep't of Admin. Servs., 790 F. Supp. 758 (S.D. Ohio Apr. 23, 1992) (Kinneary, J.) (§ 101 of the Act does not apply to pending cases).

Davis v. Therm-O-Disc, Inc., No. 5:91CV1602, 1992 U.S. Dist. LEXIS 6045 (S.D. Ohio May 21, 1992) (Bell, J.) (§§ 101, 102 of the Act do not apply to pending cases).

Tye v. City of Cincinnati, 794 F. Supp. 824 (S.D. Ohio May 21, 1992) (Spiegel, J.) (the Act does not apply to pending cases).

Delfin v. Turnage, 792 F. Supp. 522 (W.D. Ky. June 2, 1992) (Allen, J.) (the Act does not apply to pending cases).

Harris v. Board of Educ. of Columbus, Ohio, City Sch. Dist., No. C-2-86-909, 1992 WL 146637 (S.D. Ohio June 26, 1992) (Smith, J.) (the Act does not apply to pending cases).

Seventh Circuit—District Courts

McKnight v. Merrill Lynch, No. 90-C-597, 1992 WL 74414 (E.D. Wis. Jan. 9, 1992) (Curran, J.) (the Act does not apply to pending cases).

Hameister v. Harley-Davidson, Inc., 785 F. Supp. 113 (E.D. Wis. Feb. 28, 1992) (Curran, J.) (the Act does not apply to pending cases).

McCullough v. Consolidated Rail Corp., 785 F. Supp. 1309 (N.D. Ill. Mar. 3, 1992) (Norgle, J.) (§ 102 of the Act does not apply to pending cases).

Sofferin v. American Airlines, Inc., 785 F. Supp. 780 (N.D. Ill. Mar. 9, 1992) (Norgle, J.) (§ 102 of the Act does not apply to pending cases).

Ribando v. United Airlines, Inc., 787 F. Supp. 827 (N.D. Ill. Mar. 20, 1992) (Norgle, J.) (§ 102 of the Act does not apply to pending cases).

Moore v. Burlington Northern R.R. Co., 790 F. Supp. 781 (N.D. Ill. Mar. 31, 1992) (Aspen, J.) (§ 102 of the Act does not apply to pending cases).

Louis v. Community and Economic Dev. Ass'n of Cook County, No. 92-C-0191, 1992 U.S. Dist. LEXIS 5406 (N.D. Ill. Apr. 15, 1992) (Aspen, J.) (the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Mazen v. Board of Regents of Regency Univs. of the State of Illinois, 789 F. Supp. 954 (C.D. Ill. Apr. 15, 1992) (Mills, J.) (§ 101 of the Act does not apply to pending cases).

Nigrelli v. Catholic Bishop of Chicago, 794 F. Supp. 246 (N.D. Ill. Apr. 29, 1992) (Maronzi, J.) (§ 102 of the Act does not apply to pending cases).

Kennedy v. Fritsch, No. 90-C-5446, 1992 U.S. Dist. LEXIS 7223 (N.D. Ill. May 14, 1992) (Nordberg, J.) (the Act does not apply to pending cases).

McKnight v. General Motors, No. 87-C-248, 1992 U.S. Dist. LEXIS 8154 (E.D. Wis. June 2, 1992) (Gordon, J.) (§ 101 of the Act does not apply to pending cases).

Sullivan v. Helene Curtis, Inc., No. 90-C-4365, 1992 WL 220783 (N.D. Ill. June 5, 1992) (Holderman, J.) (§ 102 of the Act does not apply to pending cases).

Prymula v. Northern Trust Co., No. 91-C-4710, 1992 U.S. Dist. LEXIS 8238 (N.D. Ill. June 11, 1992) (Nordberg, J.) (§ 102 of the Act does not apply to pending cases).

Bush v. Commonwealth Edison Co., No. 89-C-652, 1992 WL 162253 (N.D. Ill. July 6, 1992) (Aspen, J.) (the Act does not apply to pending cases).

Bloomfield v. Chrysler Corp., No. 90-C-20129, 1992 WL 170569 (N.D. Ill. July 13, 1992) (Reinhard, J.) (the Act does not apply to pending cases).

U.S. Equal Employment Opportunity Comm'n v. Northwestern Steel & Wire, Inc., No. 92-C-20106, 1992 WL 188321 (N.D. Ill. July 20, 1992) (Reinhard, J.) (§ 102 of the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Melendez v. Illinois Bell Tel. Co., No. 90-C-5020, 1992 WL 182234 (N.D. Ill. July 24, 1992) (Duff, J.) (the Act does not apply to pending cases).

Torres v. Health Charge Corp., No. 91-C-2591, 1992 WL 193556 (N.D. Ill. Aug. 3, 1992) (Guzman, J.) (the Act does not apply to pending cases).

Pandya v. City of Chicago, No. 91-C-5700, 1992 U.S. Dist. LEXIS 12074 (N.D. Ill. Aug. 11, 1992) (Hart, J.) (§ 102(c) of the Act does not apply to pending cases).

Simon v. Ravenswood Hosp. Medical Ctr., No. 92-C-3764, 1992 U.S. Dist. LEXIS 12430 (N.D. Ill. Aug. 18, 1992) (Aspen, J.) (the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Golden v. Pioneer Life Ins. Co. of Illinois, No. 90-C-20338, 1992 WL 229619 (N.D. Ill. Aug. 25, 1992) (Reinhard, J.) (the Act does not apply to pending cases).

Moore v. Sheahan, No. 92-C-3692, 1992 WL 245538 (N.D. Ill. Sept. 21, 1992) (Conlon, J.) (the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Augustin v. Mason, No. 92-C-1992, 1992 U.S. Dist. LEXIS 14368 (N.D. Ill. Sept. 23, 1992) (Leinenweber, J.) (§ 102 of the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Khan v. Loyola Univ., Chicago, No. 91-C-8344, 1992 U.S. Dist. LEXIS 15060 (N.D. Ill. Oct. 2, 1992) (Plunkett, J.) (§ 101 of the Act does not apply to pending cases).

Ratay v. Montgomery Ward & Co., No. 92-C-3965, 1992 U.S. Dist. LEXIS 15203 (N.D. Ill. Oct. 6, 1992) (Conlon, J.) (the Act does not apply to pending cases).

Deinde v. American Tel. and Tel. Co., No. 90-C-7347, 1992 U.S. Dist. LEXIS 15575 (N.D. Ill. Oct. 8, 1992) (Andersen, J.) (§§ 101, 102 of the Act do not apply to pending cases).

Eighth Circuit—District Courts

High v. Broadway Indus., Inc., No. 90-1066-CV-H-3, 1992 U.S. Dist. LEXIS 446 (W.D. Mo. Jan. 7, 1992) (Hunter, J.) (the Act does not apply to pending cases).

Oliva v. Trans World Airlines, Inc., 788 F. Supp. 426 (W.D. Mo. Jan. 29, 1992) (Bartlett, J.) (the Act does not apply to pending cases).

Hughes v. Matthews, No. LR-C-90-422, 1992 U.S. Dist. LEXIS 8337 (E.D. Ark. Feb. 6, 1992) (Wright, J.) (the Act does not apply to pending cases).

Cook v. Foster Forbes Glass, 783 F. Supp. 1217 (E.D. Mo. Feb. 21, 1992) (Limbaugh, J.) (the Act does not apply to pending cases).

Conerly v. CVN Companies, Inc., 785 F. Supp. 801 (D. Minn. Feb. 21, 1992) (Doty, J.) (§ 101 of the Act does not apply to pending cases).

Limuel v. Donrey Corp., No. PB-C-91-449, 1992 U.S. Dist. LEXIS 8404 (E.D. Ark. Feb. 24, 1992) (Wright, J.) (the Act does not apply to pending cases).

Wright v. General Dynamics Corp., No. LR-C-89-252, 1992 U.S. Dist. LEXIS 8338 (E.D. Ark. Mar. 3, 1992) (Reasoner, J.) (the Act does not apply to pending cases).

Gerzick v. Austin, No. 89-0838-CV-W-2, 1992 U.S. Dist. LEXIS 4638 (W.D. Mo. Mar. 13, 1992) (Gaitan, J.) (the Act does not apply to pending cases).

Kientzy v. McDonnell Douglas Corp., No. 90-584C(1), 1992 WL 196769 (E.D. Mo. May 26, 1992) (Noce, J.) (the Act does not apply to pending cases).

Crittendon v. Columbia Orthopaedic Group, No. 91-4054-CV-C-66BA, 1992 WL 240373 (W.D. Mo. June 5, 1992) (Knox, J.) (the Act does not apply to pending cases).

Ninth Circuit—District Courts

Benitez v. Portland Gen. Elec., No. 91-864-PA, 1992 U.S. Dist. LEXIS 5259 (D. Or. Feb. 26, 1992) (Panner, J.) (the Act does not apply to pending cases).

DeHerrera v. M.P.W. Stone, 796 F. Supp. 420 (D. Ariz. July 16, 1992) (Roll, J.) (the Act does not apply to pending cases).

Schroeder v. Potlatch Corp., No. C-89-3695-SBA, 1992 U.S. Dist. LEXIS 12548 (N.D. Cal. Aug. 18, 1992) (Armstrong, J.) (the Act does not apply to pending cases).

Tenth Circuit—District Courts

Hansel v. Public Serv. Co. of Colorado, 778 F. Supp. 1126 (D. Colo. Dec. 11, 1991) (Babcock, J.) (the Act does not apply to pending cases).

Simons v. Southwest Petro-Chem, Inc., No. 90-2243-V, 1992 U.S. Dist. LEXIS 1842 (D. Kan. Jan. 22, 1992) (Van Bebber, J.) (the Act does not apply to pending cases).

Burchfield v. Derwinski, 782 F. Supp. 532 (D. Colo. Jan. 29, 1992) (Finesilver, J.) (the Act does not apply to pending cases).

Golightly-Howell v. Oil Chemical and Atomic Workers Int'l Union, 788 F. Supp. 1158 (D. Colo. Feb. 3, 1992) (Carrigan, J.) (the Act does not apply to pending cases).

Johnson v. Mast Advertising and Publishing, No. 90-2451-L, 1992 U.S. Dist. LEXIS 2860 (D. Kan. Feb. 10, 1992) (Lungstrum, J.) (the Act does not apply to pending cases).

Lange v. CIGNA Individual Fin. Serv. Co., No. 90-2053-0, 1992 U.S. Dist. LEXIS 5734 (D. Kan. Feb. 12, 1992) (O'Conner, J.) (the Act does not apply to pending cases).

Tusa v. Stanley Dry Cleaners, No. 91-2116-V, 1992 WL 50878 (D. Kan. Feb. 25, 1992) (Van Bebber, J.) (the Act does not apply to pending cases), *aff'd*, 1992 WL 219040 (10th Cir. Sept. 10, 1992).

Steinle v. Boeing Co., 785 F. Supp. 1434 (D. Kan. Feb. 26, 1992) (Crow, J.) (the Act does not apply to pending cases).

Guillory-Wuerz v. Brady, 785 F. Supp. 889 (D. Colo. Mar. 15, 1992) (Arraj, J.) (the Act does not apply to pending cases).

Simmons v. City of Kansas City, No. 88-2603-O, 1992 U.S. Dist. LEXIS 5732 (D. Kan. March 16, 1992) (O'Conner, J.).

Brown v. Anheuser-Busch, Inc., No. 91-A-1677, 1992 WL 78065 (D. Colo. Mar. 31, 1992) (Arraj, J.) (the Act does not apply to pending cases).

Gomez v. Martin Marietta Corp., No. 88-1430 (D. Colo. Apr. 1, 1992) (Carrigan, J.) (the Act does not apply to pending cases).

Maxwell v. Handicapped Educ. & Living Programs, No. 91-2387-0, 1992 U.S. Dist. LEXIS 6431 (D. Kan. Apr. 13, 1992) (O'Conner, J.) (the Act does not apply to pending cases).

Donaldson v. Brady, No. 91-A-1841, 1992 WL 119497 (D. Colo. May 14, 1992) (Arraj, J.) (the Act does not apply to pending cases).

Jarrett v. US Sprint Communications Co., No. 91-2120-V, 1992 U.S. Dist. LEXIS 8770 (D. Kan. May 22, 1992) (Van Bebber, J.) (the Act does not apply to pending cases).

Bullock v. Dillard Dep't Stores, Inc., No. 91-2474-0, 1992 WL 167015 (D. Kan. June 1, 1992) (O'Connor, J.) (the Act does not apply to pending cases).

Berry v. General Motors Corp., 796 F. Supp. 1409 (D. Kan. June 17, 1992) (Lungstrum, J.) (the Act does not apply to pending cases).

Equal Employment Opportunity Comm'n v. Century I, L.C., 142 F.R.D. 494 (D. Kan. June 25, 1992) (Lungstrum, J.) (the Act does not apply to pending cases).

Powell v. Board of Pub. Utils. of Kansas City, No. 90-2099-0, 1992 WL 176424 (D. Kan. July 7, 1992) (O'Connor, J.) (the Act does not apply to pending cases).

Scherzer v. Midwest Cellular Tel. Co., No. 91-2473, 1992 WL 214972 (D. Kan. Aug. 10, 1992) (O'Connor, J.) (§ 102 of the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Little v. Wichita Coca-Cola Bottling Co., No. 91-1205-B, 1992 WL 223758 (D. Kan. Aug. 12, 1992) (Belot, J.) (the Act does not apply to pending cases).

Jacobson v. Roadway Express, Inc., No. 90-2396-0, 1992 WL 221584 (D. Kan. Aug. 20, 1992) (O'Connor, J.) (the Act does not apply to pending cases).

Lange v. Frank, No. 90-C-0674-S (D. Utah Aug. 21, 1992) (Sam, J.) (the Act does not apply to pending cases).

White v. Union Pacific R.R., No. 91-1371-K, 1992 WL 276639 (D. Kan. Sept. 15, 1992) (White, J.) (the Act does not apply to pending cases).

Sloan v. Boeing Co., Nos. 92-1014-B, 92-1183B, 1992 WL 246610 (D. Kan. Sept. 25, 1992) (Belot, J.) (the Act does not apply to cases involving pre-Act conduct filed after the effective date of the Act).

Eleventh Circuit—District Courts

Holman v. Macy's South, Inc., No. 1:91-CV2324JTC, 1992 WL 117107 (N.D. Ga. Jan. 7, 1992) (Harper, J.) (the Act does not apply to pending cases).

Ihedioha v. EMRO Mktg. Co., No. 1:91-CV-2873-DDE, 1992 U.S. Dist. LEXIS 5217 (N.D. Ga. Jan. 29, 1992) (Chancey, J.) (the Act does not apply to pending cases).

Doe v. Board of Comm'rs, Palm Beach County, Florida, 783 F. Supp. 1379 (S.D. Fla. Jan. 30, 1992) (Highsmith, J.) (§§ 101, 102 of the Act do not apply to pending cases).

Adkins v. Jackson County Hosp., No. CV-91-H-2300-NE (N.D. Ala. Feb. 4, 1992) (Hancock, J.) (the Act does not apply to pending cases).

Wren v. USX Corp., No. CV-91-H-2430-S (N.D. Ala. Feb. 4, 1992) (Hancock, J.) (the Act does not apply to pending cases).

Maddox v. Norwood Clinic, Inc., 783 F. Supp. 582 (N.D. Ala. Feb. 14, 1992) (Hancock, J.) (the Act does not apply to pending cases).

Zimmerman v. Atlanta Hawks, Ltd., No. 1:88-CV-2798-WCO (N.D. Ga. Feb. 26, 1992) (Harper, M.J.) (the Act does not apply to pending cases).

Toney v. State of Alabama, No. CV-91-A-438-N, 1992 U.S. Dist. LEXIS 12381 (M.D. Ala. Mar. 4, 1992) (Albriton, J.) (§ 101 of the Act does not apply to pending cases).

Hayes v. Shoney's, Inc., No. 89-30093-RV, 1992 WL 207313 (N.D. Fla. Mar. 12, 1992) (Vinson, J.) (the Act does not apply to pending cases).

Brown v. Keebler Co., No. 1:91-CV-1395RLV, 1992 WL 159121 (N.D. Ga. Mar. 28, 1992) (Feldman, J.) (the Act does not apply to pending cases).

Washington v. Keebler Co. Inc., No. 1:89-CV-765-ODE, 1992 WL 220782 (N.D. Ga. June 2, 1992) (Evans, J.) (the Act does not apply to pending cases).

James v. American Int'l Recovery, Inc., No. 1:89-CV-321-RHH, 1992 WL 196871 (N.D. Ga. June 3, 1992) (Hall, J.) (the Act does not apply to pending cases).

Porter v. American Cast Iron Pipe Co., No. CV91-P-1870-S, 1992 WL 209549 (N.D. Ala. June 19, 1992) (Pointer, J.) (§ 101 of the Act does not apply to pending cases).

King v. Tandy Corp./Radio Shack, No. 91-78-ATH(DF), 1992 WL 174289 (M.D. Ga. July 24, 1992) (Fitzpatrick, J.) (§§ 101, 102 of the Act do not apply to pending cases).

Peters v. Board of Regents Georgia S. Univ., No. 1:91-CV2627JOF, 1992 WL 252134 (N.D. Ga. Sept. 14, 1992) (Forrester, J.) (the Act does not apply to pending cases).

Tolbert v. City of Daphne and Parsons, No. 92-0384-BH-M, 1992 U.S. Dist. LEXIS 15323 (S.D. Ala. Oct. 5, 1992) (Hand, J.) (the Act does not apply to pending cases).

D.C. Circuit—District Courts

Van Meter v. Barr, 778 F. Supp. 83 (D.D.C. Dec. 18, 1991) (Gesell, J.) (§ 102 of the Act does not apply to pending cases).

Mitchell v. Secretary of Commerce, No. 82-3020, 1992 U.S. Dist. LEXIS 147 (D.D.C. Jan. 10, 1992) (Richey, J.) (§ 114 of the Act does not apply to pending cases).

Adrain v. Alexander, No. 88-3581 (D.D.C. Jan. 15, 1992) (Pratt, J.) (§ 102 of the Act does not apply to pending cases).

Stewart v. Brady, No. 90-0730 (D.D.C. Jan. 16, 1992) (Greene, J.) (the Act does not apply to pending cases).

Mayfield v. Barr; *Edwards v. Barr*, Nos. 86-0435, 86-2447 (D.D.C. Jan. 21, 1992) (Pratt, J.) (§ 102 of the Act does not apply to pending cases).

Horne v. Thornburgh, No. 88-2367 (D.D.C. Jan. 29, 1992) (Green, J.) (the Act does not apply to pending cases).

Parker v. Frank, No. 91-2442, 1992 U.S. Dist. LEXIS 5263 (D.D.C. Feb. 25, 1992) (Hogan, J.) (§ 102 of the Act does not apply to pending cases).

Hatcher-Capers v. Haley, 786 F. Supp. 1054 (D.D.C. Mar. 20, 1992) (Richey, J.) (§ 102 of the Act does not apply to pending cases).

Brereton v. Communications Satellite Corp., No. 86-3082, 1992 U.S. Dist. LEXIS 6712 (D.D.C. May 7, 1992) (Richey, J.) (§ 102 of the Act does not apply to pending cases).

Jones v. Washington Metro. Area Transit Auth., No. 89-0552, 1992 U.S. Dist. LEXIS 11504 (D.D.C. Aug. 7, 1992) (Lamberth, J.) (§ 102 of the Act does not apply to pending cases).

Cook v. Billington, No. 82-0400, 1992 U.S. Dist. LEXIS 12519 (D.D.C. Aug. 14, 1992) (Johnson, J.) (§§ 104, 105 of the Act do not apply to pending cases).